TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958.

No. 92

SERVICE STORAGE AND TRANSFER CO., INC., PETITIONER,

vs.

COMMONWEALTH OF VIRGINIA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

PETITION FOR CERTIORARI FILED JUNE 9, 1958
CERTIORARI GRANTED OCTOBER 13, 1958

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN THE SUPREME COURT OF APPEALS OF VIRGINIA AT RICHMOND

Record No. 4748

SERVICE STORAGE AND TRANSFER CO., INC., Appellant,

against

COMMONWEALTH OF VIRGINIA, Appellee.

From the State Corporation Commission

ORDER AWARDING APPEAL AND SUPERSEDEAS—
May 14, 1957

Upon the petition of Service Storage and Transfer Company, Incorporated, an appeal of right and *supersedeas* is awarded it by one of the Justices of the Supreme Court of Appeals on May 14, 1957, from an order entered by the State Corporation Commission on the 26th day of February, 1957, in a certain proceeding then therein depending wherein the Commonwealth of Virginia, at the relation of the State Corporation Commission was plaintiff and the petitioner was defendant; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said State Corporation Commission in the penalty of seventy-five hundred dollars, with condition as the law directs.

[fol. 2]

BEFORE THE STATE CORPORATION COMMISSION OF VIRGINIA

Case No. 13182

COMMONWEALTH OF VIRGINIA, at the relation of the STATE CORPORATION COMMISSION,

v.

SERVICE STORAGE & TRANSFER COMPANY, INCORPORATED.

ORDER AWARDING RULE TO SHOW CAUSE—
September 19, 1956

It appears to the Commission that Service Storage & Transfer Company, Incorporated, of Bluefield, West Virginia, was found to be hauling property in intrastate commerce without authority of the State Corporation Commission and in violation of Chapter 12, Title 56 of the Code of Virginia on the following occasions, to-wit:

August 21, 1956, U. S. Highway No. 460, one mile north of Pearisburg, Virginia, White tractor, Registration Card 18807, West Virginia license K-3345, shipment portable air compressor from Rish Equipment Company, Roanoke, Virginia, to Heron Todd Steel Construction Company, Incorporated, Glen Lyn, Virginia.

August 22, 1956, U. S. Highway No. 460, one mile north of Pearisburg, Virginia, no registration, no identification marker, International truck, West Virginia license K-3329, shipment cotton work clothing from Norfolk and Western Industries, Incorporated, Lynchburg, Virginia, to Sutphin & Jackson, Draper, Virginia.

September 6, 1956, U. S. Highway No. 460, one mile north of Pearisburg, Virginia, Registration Card 18798, White tractor, West Virginia license K-3337, shipment TV picture tubes, Leonard Electronics of Roanoke, Incorporated, Roanoke, Virginia, to Wytheville Vance Company, Wythe-

[fol. 3] ville, Virginia; kitchen cabinet sinks and parts, Roanoke Wholesalers, Incorporated, Roanoke, Virginia, to

Buchanan Furniture Company, Coeburn, Virginia; kitchen cabinet sink and parts, Roanoke Wholesalers, Incorporated, Roanoke, Virginia, to Clinchfield Coal Corporation, Coeburn, Virginia; kitchen cabinet and parts, Roanoke Wholesalers, Incorporated, Roanoke, Virginia, to Electric Appliance Company, Big Stone Gap, Virginia, and motor parts from Southwest Motor Parts Corporation, Roanoke, Virginia, to Oakwood Motor Company, Oakwood, Virginia.

September 11, 1956, U. S. Highway No. 58, near St. Paul, Virginia, Registration Card not shown, Assigned Number VCC-208, White tractor, West Virginia license 3341, shipment cotton goods from F. D. Lazenby & Company, Bluefield, Virginia, to Haysi Hardware & Furniture Company, Haysi, Virginia, and shipment steel plates, Bristol Steel & Iron Works, Incorporated, Bristol, Virginia, to Link Belt Company, Carbo, Virginia.

September 17, 1956, junction U. S. Highway 58 and 72 at Coeburn, Virginia, Exemption Card E-194, Classification Plate same number, Virginia license T-220-690, International truck, shipment medicine, Miles Laboratories, Incorporated, Roanoke, Virginia, to Kilgore Grocery Company, Coeburn, Virginia; shipment iron railway car wheels, Enterprise Wheel & Car Corporation, Bristol, Virginia; to Banner Fuel Corporation, Cranes Nest, Virginia; shipment steel beams, Bristol Steel & Iron Works, Incorporated, Bristol, Virginia, to Quesenberry Construction Company, Wise County Court House, Wise, Virginia, and shipment medicine from Miles Laboratories, Incorporated, Roanoke, Virginia, to Coeburn Grocery Company, Coeburn, Virginia.

September 18, 1956, U. S. Highway No. 58, five miles west of Gate City, Virginia, Assigned Number E-194, Virginia license T-220-699, International truck, two shipments automobile supplies, Southwest Motor Parts Corporation, Roanoke, Virginia, to Kelly Motor Company, Big Stone Gap, Virginia.

September 19, 1956, U. S. Highway No. 11, five miles west of Abingdon, Virginia, Assigned Number E-194, Virginia license T-220-690, International truck, shipment candy from Harris Woodson Company, Incorporated, Lynchburg, Virginia, to City Food Market, Coeburn, Virginia.

September 19, 1956, U. S. Highway No. 11, five miles west of Abingdon, Virginia, Assigned Number E-194, Virginia license T-220-697, International tractor, shipment TV set, Bluefield Hardware Company, Roanoke, Virginia, to Wise Hardware, Norton, Virginia.

[fol. 4] A rule is hereby awarded, returnable at the court room of the State Corporation Commission in the State Office Building in the City of Richmond at 10:00 o'clock, a. m., on October 30, 1956, requiring Service Storage & Transfer Company, Incorporated, to appear and show cause, if any can be shown, why it should not be fined or otherwise penalized and why any and all authority issued to the said corporation should not be suspended or canceled as provided in Section 56-304.12 of the Virginia Code.

A copy of this rule shall be served on the Secretary of the Commonwealth and a copy shall be served on the agent of Service Storage & Transfer Company, Incorporated, at Roanoke, Virginia, and a copy sent by first class United States Mail to Service Storage & Transfer Company, Incorporated, Drawer 310, Bluefield, West Virginia.

A True copy.

Teste:

N. W. Atkinson, Clerk of the State Corporation Commission.

BEFORE THE STATE CORPORATION COMMISSION

[Title omitted]

Transcript of Hearing of November 29, 1956

Present: Commissioners W. Marshall King (Chairman), H. Lester Hooker, Ralph T. Catterall.

(Commissioner Hooker presiding.)

[fol. 5] APPEARANCES:

Francis W. McInerny and O. L. Shewmake, Counsel for Service Storage & Transfer Company.

W. C. Seibert, Commerce Counsel, State Corporation Commission.

Commissioner Hooker: You may proceed, Mr. Seibert.

Mr. Seibert: May it please the Commission, this case, No. 13182, is another case against Service Storage & Transfer Company, Inc. alleging the operation of motor vehicles in Virginia without authority of the State Corporation Commission and transporting of property as a common carrier in violation of Chapter 12, Title 56 of the Code of Virginia. The particular offenses alleged are set out in the rule and will be shown by the proper witnesses.

As the Commission will recall, this is the second rule of a similar kind against this company.

Commissioner Hooker: Against the same carrier?

Mr. Seibert: Yes, in Case 1374, the Service Storage and Transfer Company was fined twenty-five dollars and costs. Following that case Mr. Randolph Harrison came to see me.

Commissioner Hooker: In that former case the Commission decided it, and a formal opinion was written?

Mr. Seibert: I don't think the opinion was written.

Mr. McInerny: There was a memorandum accompanying it and some altercation or discussion of it.

Commissioner Hooker: And this rule is for violating the memorandum the Commission issued in the former case.

Mr. Seibert: I think it has been, but I want to explain further, and Judge Shewmake can say I am wrong if I am.

As the Commission well knows and the map will indicate, as you go from Roanoke to Bluefield the normal operation between Roanoke and Bluefield is through the State of West Virginia. The defendant operates to Bluefield and uses Bluefield as a center and fans out in his operation from his Bluefield, West Virginia terminal. Following the Commission's decision in the previous case, Mr. Randolph Harrison came to Richmond and discussed the determination of the territory, which could be considered largely interstate because of the situation there in the difference of state between Virginia and West Virginia and what would be the normal movement of traffic, [fol. 6] through Bluefield. I told Mr. Harrison that we would present to the Commission what we considered as territory which would be interstate and in which our in-

spectors would not stop an operator. Mr. Harrison told me that he could not agree to anything, and I said, of course, I could not agree to anything, that it would have to go to the Commission. He was to take back to his people the suggestion we agreed upon, and upon receipt of advice from him I was to take it up with the Commission. I received no advice, and the matter now comes on for hearing.

The operation of motor vehicles interstate in Virginia has continued and continues, so far as I know, up to today and is what we would call a continuous operation by the men in the territory. The rule does not only cover alleged movements in the territory, but other violations, and since the issuance of the first rule by the Commission those shipments in the first case on which they were fined have continued, even in the face of that rule, the shipments from Roanoke to Covington, which could not by any chance be considered interstate.

Mr. McInerny: I would like to supplement what Mr. Seibert has stated. The facts stated by Mr. Seibert are substantially correct. He does state accurately that we did come here with the suggestion, without the full letter of the law in the matter, that there might be a practical way to dispose of the issues involved; and, as he suggested to the Commission, some of the traffic originating at one Virginia point and destined to another Virginia point is genuinely interstate, without any possibility of any invalidity. Such a place as that is from Roanoke to the northern section of the State. If you have a map, I could give an example, say, of Roanoke to Grundy, the logical or normal movement would be through Bluefield, West Virginia, rather than wholly Virginia highways or highways wholly situated in Virginia.

We also advised Mr. Seibert at the time we discussed the practical disposition of the controversy that because the carrier does hold an interstate certificate, it felt obligated to consult with the Interstate Commerce Commission concerning their view in the matter. At first the letter was addressed to the District Supervisor located in Roanoke. That was done in August. The District Supervisor's absence from his office on vacation and other

matters delayed his response, and when I received that I advised Mr. Seibert of the effect of it, and, to make his conclusions known officially, I consulted the Director of the [fol. 7] Bureau of Motor Carriers in Washington. The advice we have from both of those offices in Washington is that the respondent carrier does have sufficient interstate operating authority to conduct the operation it has been conducting and against which rules have been issued against them.

I want to diverse on one point, and that is the most recent rule, the one today, a total of nineteen violations are alleged. Of the nineteen, I believe that a total of six are really in controversy, and the other movements are those that would be in the twilight zone, where it could be considered interstate commerce or intrastate commerce, depending on the particular movement.

I think when we appeared here before we tried to demonstrate the carrier's good faith, and I do have some evidence that I will put on by a competent and qualified witness to show the exact pattern of its shipments that move from points in Virginia under the normal operation.

I don't know whether Mr. Seibert has been advised of this or not, that since the issuance of the last rule, many questionable operations were terminated, and, by reason of the delay involved to some of the shippers and consignees, we had to make adjustments, and some have not been able to make adjustments, to replace the carrier service afforded by respondent, and they have submitted charges to Mr. Seibert that there is nothing available for them to do and that they know there is interstate commerce through Bluefield and through Bluefield, West Virginia, and the billings are on interstate commerce billings, governed by interstate tariffs, and I feel confident everything I have said is factually accurate.

Mr. Seibert: It may be factually accurate, but we don't agree that it is correct. The fact that they go to Bluefield, West Virginia for their own convenience does not validate the operation. We say it is not the normal, logical movement.

Mr. McInerny: May I say something in regard to the carrier's own convenience, that from the traffic, under the

interpretation of the Interstate Commerce Commission, the movement of all traffic from West Virginia to Virginia points, they must observe Bluefield, West Virginia as the gateway point, because that is the point designated by the Interstate Commerce Commission.

Commissioner Catterall: They would not force you to take a parcel from Bluefield to Roanoke and back to Salem, would they?

Mr. McInerny: The situation on that is, as a practical [fol. 8] matter, I don't think the traffic would be offered to the carrier, but as a matter of law, I don't think an extreme situation of that type has ever been tested, and, theoretically, under the adjudication by the two authorities there, because the tariffs are in existence, and they are holding out under the tariff theoretically a shipment as an interstate shipment, they could complain to the Interstate Commerce Commission and ask the Commission to require the carrier to perform that service; and if it was performed, the only legal way it could be performed under the Interstate Commerce Commission would be through Bluefield, West Virginia.

Commissioner Hooker: I have a letter here from Mr. Blanning, Director of the Interstate Commerce Commission Bureau of Motor Carriers, which seems to be inconsistent with your statement and which reads as follows:

"Whether such manner of operation constitutes a *bona fide* interstate operation or an attempt to evade the jurisdiction of the Virginia authorities would seem to depend upon all the facts, and I express no opinion in that regard."

Mr. McInerny: I believe I was the one that sent that to the Commission.

Commissioner Hooker: You may have, but your statement does not state the facts.

Mr. McInerny: It does, Your Honor, and there was a Maryland operator, a carrier having authority from Baltimore to Washington, and also a second link of authority between Washington and Annapolis. He was conducting operations from Baltimore to Annapolis, and the Maryland authorities brought a proceeding against him to cause him to cease and desist; and he resisted the proceeding, and the Maryland Court of Appeals upheld the decision

that that operator was operating wholly intrastate in Maryland; in other words, the carrier was short-circuiting by coming through directly to Annapolis and not going to Washington and coming back, and they made him desist, but any shipments from Washington, D. C. they held were interstate shipments.

Commissioner Hooker: But that was an interstate operation.

Mr. McInerny: The situation is wholly analogous.

[fol. 9] Commissioner Hooker: If he picks up and delivers in Virginia, it is wholly intrastate business.

Commissioner Catterall: He was going straight down No. 2.

Commissioner Hooker: In going to Washington.

Mr. McInerny: It was from Baltimore directly to Annapolis.

Commissioner Hooker: But that was intrastate.

Mr. McInerny: When he did it solely on the intrastate highway, the Maryland Court held it had to take it through Washington, D. C., and when he did take it to Washington, it was *bona fide* interstate.

Commissioner Catterall: That would not be *bona fide*, because he showed the direct way was down Route 2.

Mr. McInerny: I have already made it clear——

Commissioner Hooker: I think we had better hear the facts. We can't decide it on argument without hearing the facts.

Proceed with your evidence, Mr. Seibert.

Mr. Seibert: The evidence before the Commission will be presented by two different inspectors. Mr. Jones has made part of it, and Mr. Kinzer the other part.

E. O. Jones, Jr., a witness introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

Direct examination.

By Mr. Seibert:

Q. Give your name.

A. E. O. Jones, Jr.

Q. What is your business?

A. I am Investigator, Motor Transportation Department.

Q. Where are your headquarters?

A. Roanoke, Virginia.

Q. In the course of your duties, did you on August 21, 1956 check a motor vehicle on U. S. Highway No. 460, one mile north of Pearisburg, Virginia, and, if so, explain the license number and what you found on that vehicle.

A. I checked a White tractor, on August 21, 1956 at 2:45 P. M., owned by Service Storage & Transfer Company, Inc., Bluefield, West Virginia. The White tractor [fol. 10] was bearing West Virginia license K-3345 and bearing Virginia identification card and marker 18807, which was issued under their assigned number. He was hauling miscellaneous freight from Roanoke, Virginia to Bluefield, West Virginia by way of Glen Lyn, Virginia.

Q. Did he have any intrastate shipments on that vehicle?

A. He did.

Q. Which shipments did he have?

A. He had a shipment listed on Service Storage & Transfer Bill No. 32534, dated August 20, 1956, from the Rish Equipment Company in Roanoke, Virginia to the Heron Todd Steel Construction Company Inc., c/o Appalcachian (sic) Electric & Power Company, one steel air compressor.

Q. State on the map where Glen Lyn is.

Commissioner Hooker: Glen Lyn is wholly within the State of Virginia?

A. Yes, wholly within the State of Virginia, and the corporate limits are just before you cross the Virginia-West Virginia line.

By Mr. Seibert:

Q. And a shipment from Roanoke to Bluefield would not move through Glen Lyn?

A. No.

Commissioner Catterall: Which way was this truck headed?

A. Toward Bluefield.

Q. Going west?

A. Yes, sir, west on 460.

By Mr. Seibert:

Q. Now, on August twenty-second did you make another inspection of another vehicle?

A. I did make a similar inspection of another vehicle. This vehicle on the twenty-second of August was checked at 9:30 A. M.

Q. Where was that check made?

A. On Route 460 in Giles County, one mile north of Pearisburg. The tractor was owned by Service Storage & Transfer Company, Inc. and was an International two-axle truck, bearing West Virginia license K-3329.

[fol. 11] Q. It had no identification marks?

A. No, sir.

Q. Did you check an intrastate shipment on that vehicle?

A. Yes, there was a shipment under Service Storage & Transfer Company Bill No. 31389, dated August 16, 1956 from Norfolk & Western Industries, Inc. in Lynchburg, Virginia to Sutphin & Jackson, Draper, Virginia.

Q. Where is Draper located?

A. Two miles north of Pulaski, Virginia, on State Route 100.

Q. In what county?

A. Pulaski.

Q. How was that vehicle headed, on 460?

A. Yes, the vehicle, as well as I recall, was headed toward Pulaski from Bluefield; in other words, traveling south on U. S. 460.

Q. Now, I think the next date is September the sixth at the same place you made the previous check. That is about 30 or 40 miles from Roaonke? (sic)

A. It is between 50 and 55 miles from Roanoke.

Commissioner Hooker: How far is it from Draper to Bluefield, West Virginia and from Lynchburg to Draper?

A. In excess of 50 miles, not over 60 miles.

Q. It is as far from Bluefield to Draper as from Roanoke to Draper?

A. Yes, sir.

Q. The most direct route to serve Draper would be Roanoke to Bristol?

A. Actually, the most direct route would be Roanoke to Draper direct.

Q. And more direct than the Route 11?

A. The direct route goes through Draper.

Chairman King: What is the state number of that route?

A. State Route 100.

By Mr. Seibert:

Q. It leads off from Dublin?

A. Yes, from Dublin you go out Route 11 and go around [fol. 12] the route and then go around to Draper and to Route 11 again.

Commissioner Catterall: Did you ask the driver if he transported this property to Bluefield and back again?

A. The driver stated that the truck was loaded the night before in Bluefield, West Virginia. I assumed that the shipment was a part of a whole shipment originating in Roanoke and delivered to Bluefield and reallocated to the other vehicle. This was a pick-up and delivery truck, whereas the original shipment was probably a part of the tractor and trailer unit which originated at Roanoke.

Q. You were not able to ascertain whether it was dropped off at Glen Lyn or on the way to Bluefield?

A. He was going toward Bluefield.

Q. But he had not reached Glen Lyn?

A. No, we were ten miles from Glen Lyn.

Q. And you did not follow him?

A. No.

Commissioner Hooker: And the shipment from Roanoke to Draper went to Bluefield first?

A. Yes.

Chairman King: What was the date there, August twenty-second?

A. August twenty-second.

Q. And the other one was what date?
A. August twenty-first.

Mr. McInerny: Mr. Seibert, is it your idea to have them present it in the order they are in the Rule?
Mr. Seibert: Yes, as they are in the Rule.

By Mr. Seibert:

Q. September the sixth you made another check on Route 460 in Giles County, one mile north of Pearisburg at 7:10 A. M. Will you tell us about that?
A. I checked a White tractor bearing West Virginia [fol. 13] License 3337, bearing registration card No. 18798, issued to Service Storage & Transfer Company, Inc. and assigned No. 208 from the Commission.
Q. And that check was made near Pearisburg?
A. Yes.
Q. Did you find any intrastate shipments on that vehicle?
A. I did.
Q. Explain what they were.
A. He had a shipment to Service Storage. I assume he had a straight bill of lading. He had no number attached to the bill from Leonard Electronics of Roanoke, Virginia going to Wytheville Vance Company, Wytheville, Virginia.
Q. Where is Wytheville?
A. On Route 11, just south of Pulaski, about twenty miles.
Q. Anything else on that vehicle?
A. Yes, he had a shipment from Roanoke Wholesalers, Inc., Roanoke, Virginia to Buchanan Furniture Company at Coeburn, Virginia.
Q. Do you know where Coeburn is?
A. Yes, it is located in Wise County, just east of Wise, some ten miles east of Norton.
Q. Were there any other shipments on this vehicle?
A. He had a similar shipment from Roanoke Wholesalers, Inc. to the Clinchfield Coal Corporation of Coeburn, Virginia; and also a shipment from Roanoke Wholesalers, Inc. to the Electric Appliance Company of Big Stone Gap.
Q. Big Stone Gap is just west of Highway 23?
A. Just west of Norton.
Q. And was there another shipment on there?

A. There was another shipment from Roanoke, from the Southwest Motor Parts Corporation at Roanoke, Virginia to the Oakwood Motor Company in Oakwood, Virginia.

Q. Where is Oakwood?

A. I believe that is in Buchanan County, just south of Grundy. I don't believe it is shown on this map, but it is between Richlands and Grundy.

Commissioner Hooker: All of these shipments were on the same truck on September the sixth?

A. Yes, sir, all on the same truck, all part of the same lading.

[fol. 14] Q. Are you familiar with the highway between Coeburn and Grundy?

A. Yes, sir, I am.

Q. You don't have to go into West Virginia to go to those points?

A. Between Coeburn and Grundy?

Q. Yes.

A. From Roanoke?

Q. To go from Roanoke to Wytheville, do you go to Coeburn first, or do you have to go to West Virginia at all?

A. It is not necessary. If you go from Roanoke to Coeburn direct, you mean?

Q. Yes.

A. The most direct route from Roanoke to Coeburn is via Abingdon by Route 11 for 178 miles from Roanoke to Coeburn; via Bluefield, West Virginia, it is 201 miles via Lebanon.

By Mr. Seibert:

Q. Now, Mr. Jones, you were aware of this Rule of September nineteenth, were you not?

A. Yes.

Q. And also aware of the Commission's order in the previous case, Case No. 13074?

A. Yes.

Q. And I believe the decision in that case was made on July 9, 1956?

A. That is correct.

Q. Now, in addition to the shipments referred to in the

Rule of the Commission of September 19, 1956, have you continued to check on the highways and found other vehicles operated by the Service Storage & Transfer Company hauling intrastate shipments?

A. I have.

Q. Can you give the Commission those shipments?

A. On October eighteenth at 5:30 P. M. on Route 460 in Montgomery County, about four miles east of Blacksburg, I checked a two-axle van, International, owned by Service Storage & Transfer Company, Bluefield, West Virginia, license No. K-3319. He was operating and hauling miscellaneous freight from Roanoke, Virginia to Kimballton, Virginia.

Q. Where is Kimballton?

[fol. 15] A. In Giles County, between Pembroke and Pearisburg.

Q. That is how far from Roanoke?

A. From Roanoke to Kimballton is 66 miles.

Q. How far is that east of Bluefield?

A. I can tell you how far it would be from Roanoke to Bluefield and coming back to Kimballton.

Q. How far from Roanoke to Bluefield?

A. It is 111 miles.

Q. And did you not say it is 66 miles from Roanoke to Kimballton?

A. Yes, sir. 66 miles.

Q. That would make it 45 miles from Bluefield east to Kimballton?

A. Approximately, yes, sir.

Mr. Seibert: I would like to call to the Commission's attention that in this particular case it was a similar shipment to that referred to in the Commission's order previously.

Commissioner Hooker: In other words, this is a violation of the finding in the former case?

By Mr. Seibert:

Mr. Seibert: Yes, that is another example of the violation of the Commissioner's order.

Q. Have you any other shipments?

A. Yes, on October 25, 1956 at 2:15 P. M. in Bland County at the intersection of U. S. 52-21 and State Route 61 I checked an International tractor owned by Service Storage & Transfer Company, Inc. bearing West Virginia License No. K-6398, operating under Card 21433 under the State Corporation Commission. There was no assigned number painted on the vehicle. This truck had a shipment under Service Storage & Transfer Company Shipping order dated October 23, 1956 coming from Reevers, Inc., Chilhowie, Virginia.

Q. That is on No. 11?

A. Yes, just south of Narrows.

Q. Where was that going?

A. Going to the Davis Feed and Seed Store at Martinsville, Virginia.

Commissioner Hooker: Where?

[fol. 16] A. Going to Davis Feed and Seed Store, Martinsville, Virginia.

Q. It could not possibly go through any other states going between those points?

A. It could go to North Carolina. It could go through Mount Airy, North Carolina.

Q. Mount Airy, North Carolina?

A. Yes.

Q. How much out of the way would that be?

A. From Chilhowie to Martinsville direct is 132 miles.

Q. That is through Roanoke?

A. No, through Wytheville.

Q. And down through Patrick over Route 58?

A. Yes.

By Mr. Seibert:

Q. That is the direct route?

A. Yes, that is the direct route, but it could go through Roanoke and direct to Martinsville.

Mr. Seibert: If I recall correctly, I found the Interstate Commerce Commission's certificate, but I don't believe the Service Storage & Transfer Company has any rights in North Carolina.

Mr. McInerny: I will stipulate that.

Commissioner Catterall: If you went from Chilhowie to Bluefield to Martinsville, how far would that be?

A. 245 miles. That, of course, is going through Bluefield and coming back through Pearisburg and Roanoke.

Q. Did you ask that driver if he had been to Bluefield?

A. He was on the road four or five miles from the State line, going to Bluefield. He was bringing it from Chilhowie through Bluefield, West Virginia, coming back to Chilhowie.

Mr. McInerny: If I understand Counsel for the Commission correctly, he is not alleging that any of these movements failed to move through the terminal at Bluefield, West Virginia.

Mr. Seibert: I don't know how they moved. This is what we found. I cannot say that they do or do not. In some of these cases, I don't think the fact that he goes to Bluefield and in and out makes any difference, but the allegation [fol. 17] is that they all go to Bluefield and back.

Commissioner Catterall: We have not yet found a witness that stated that they did not go through Bluefield?

Mr. Seibert: No.

Mr. McInerny: On these shipments, on cross examination, I assume that Counsel for the Commission will agree that there is no evidence produced by the State that any of these vehicles in routing the shipments from one point to another point in Virginia failed to move through Bluefield, West Virginia.

Mr. Seibert: Up to this point there has not been. I don't know what is coming.

Witness: In addition to the shipment just mentioned, there was a shipment on Service Storage & Transfer Company Bill No. 65666, dated October 23, 1956, from Heekin, Inc., c/o Flat Top Warehouse Company, Bluefield, West Virginia, going to the Mathieson General Stores of Saltville, Virginia. I might add that the driver stated this shipment was being returned to the shipper.

Commissioner Hooker: What was that?

A. The driver stated that that was being returned to the shipper.

Commissioner Catterall: He did not claim that he was going to take that to Bluefield?

A. If I might explain, during the course of my investigation I determined that the driver had originated that morning with his load and had made surrounding deliveries of merchandise he had on his trailer, and I assume that for some reason the Mathieson General Store refused this shipment, as well as the next shipment the consignee refused, and it was being returned either to the Service Storage & Transfer Company or to the shipper.

Commissioner Catterall: He had crossed over from Bluefield, West Virginia when you found him?

A. Yes, he had that morning already been in Virginia from Bluefield.

Q. Then he picked up the parcel in Bluefield, Virginia. I [fol. 18] don't suppose you asked him if he had been to Bluefield, West Virginia?

A. He said this was being returned to the shipper because it was refused by the receiver. I don't know whether he picked it up en route from Saltville to Bluefield or whether it ran through Bluefield, West Virginia.

Q. Do you have the name of that particular driver?

A. His name was David Leon Williamson of Marmet, West Virginia. The other shipment which was on the trailer, which is similar in nature to the one I just referred to, was from the Sealy Mattress Company at Bluefield, Virginia, consigned to the Center Furniture Company at Marion, Virginia on Service Storage & Transfer Bill No. 65681, dated October 23, 1956.

Commissioner Hooker: Coming out of Bluefield, West Virginia, would you come through Bluefield, Virginia; is that the direct route?

A. Depending on which direction you are going.

Q. To Marion?

A. I would think that it would be, with a tractor-trailer. There are only two ways through Bland County.

Q. Picking it up in Bluefield and going to Saltville, would

it be feasible to turn around and go through West Virginia and come back on the same road?

A. No, sir.

By Mr. Seibert:

Q. In other words, a shipment from Bluefield, Virginia to Marion would come down 460 to Tazewell and down 16 to to (sic) Marion, and, likewise, would come down 16 and 42 to Saltville?

A. Yes, sir.

Commissioner Catterall: Now, when you stopped that vehicle, was it going to or away from Bluefield?

A. It was going toward Bluefield, West Virginia, on Route 52, and Route 52 comes into Bluefield, West Virginia.

By Mr. Seibert:

Q. That particular shipment, according to the statement of the driver, did not go into West Virginia first?

[fol. 19] A. I have no way of knowing, on these particular shipments, whether he picks them up en route to Marion or whether they are part of the shipments which have been picked up formerly in Bluefield and rerouted on his trailer to Bluefield.

Q. Did you not say the shipment from Mathieson was a returned shipment?

A. It was being returned to Bluefield.

Commissioner Hooker: That was the point I was making, that you have to go through Bluefield, Virginia to go to Bluefield, West Virginia.

A. Not if you go over 52.

Q. How would you go to Princeton?

A. Route 52 enters into Bluefield, West Virginia at the southern city limits.

Mr. McInerny: May I make inquiry of the Counsel and the Commission that all of this in no way relates to the account set forth in the Rule.

Mr. Seibert: No, as I stated to the Commission, the first three cases were set out in the Rule, but since the issuance of

this Rule and the decision by the Commission, the operations have continued as we have outlined here.

Cross examination.

By Mr. McInerny:

Q. Mr. Jones, when you made your investigation and apprehended these drivers, did you flag them down, or do you meet them at some terminal point?

A. I might interrupt you to say that the drivers were not apprehended.

Q. When you had your conference with the drivers, what method did you proceed under?

A. In all the instances mentioned in my testimony, with the exception of the truck which was stopped in Montgomery County, they were all checked at a road block, during which we were checking all truck traffic.

Q. And when you informed the driver you had a legitimate purpose for investigating the lading on the vehicle, did you ask for the shipping documents accompanying the truck?

A. I did.

[fol. 20] Q. Did you receive them in each case from the driver?

A. I did.

Q. Is this one of the shipments which you have knowledge of, sir?

A. Yes.

Q. Is that a duplicate copy of the manifest or instruments shown you by the driver?

A. The pro is.

Q. Did he also show you the other instruments that accompanied the vehicle at that time?

A. I don't recall seeing them.

Q. Did you ask for them?

A. I might clear up something before we go into this further, Mr. McInerny. At the time when I checked the vehicle, I asked the driver for his bill. Some drivers do not desire or are under instructions from the company not to let go of the manifest for the trucks they have, and I have run

into cases where the driver was even reluctant to produce the manifest; however, the drivers all produce the lading. That is why I am unsure of whether that was produced or not.

Q. With respect to the drivers from Service Storage & Transfer Company, were they willing to produce anything they were asked for? Were they cooperative?

A. Oh, yes.

Q. Let's take a specific shipment you checked, the one from the N & W Industries from Lynchburg to Draper, Virginia, on Service Storage & Transfer Bill 31389, I believe, and I have a copy of that, a photostat copy, and it is what we term a "manifest," and what does the manifest indicate to you, sir? Is that shipment listed on the manifest?

A. It does not give the same pro number. It shows on the manifest the pro number as 13154, and the actual pro number of the bill was 31389.

Q. But the shipment is a one-piece shipment weighing 101 pounds moving to Draper?

A. That is correct.

Q. Moving on August 16, 1956?

A. That is correct.

Q. And the manifest shows it was delivered to Service Storage & Transfer Company at Bluefield, West Virginia, does it not?

A. Yes, sir, it does.

[fol. 21] Q. Now, a second instrument, entitled "Service Storage & Transfer," shows that the shipment moved out of Bluefield, West Virginia to the ultimate destination, does it not?

A. It does.

Q. So would you not conclude from those three instruments, the freight bill and the two manifests, that, at least with respect to this particular shipment, it was picked up at Lynchburg and brought into Bluefield, West Virginia, and then assigned on a small truck, the pick-up and delivery truck you described, to the ultimate destination of Draper?

A. Yes, sir.

Q. You indicated, with respect to the shipment from Roanoke to Glen Lyn, the first one indicated on the Rule, that it moved from Roanoke to Bluefield via Glen Lyn. Did you intend to convey in that statement that the shipment moved

from the point of origin to the point of destination without being terminated in Bluefield, West Virginia?

A. No, sir. I have no way of knowing whether he delivered the load before he got to Bluefield, West Virginia, or not. I was merely trying to clarify to the Commission the route he took.

Q. With respect to any of the shipments you referred to or investigated, you could not say nor have you any evidence to support, any allegation to the effect that any of the shipments failed to go through Bluefield, West Virginia?

A. No, sir, I don't.

Q. And the evidence you do have, to the extent you have investigated it, does not all your investigation indicate that the traffic did, in fact, move through Bluefield, West Virginia?

A. Yes, sir.

Q. Every shipment?

A. I cannot be sure whether they did or not, but I would assume from the documents you have put before me, I would assume they do.

Q. And, having a knowledge of the operations in that area of the State, don't you, as a matter of fact, believe this traffic moved from Roanoke down through Southwest Virginia actually does move through our Bluefield, West Virginia terminal?

A. I would not have any way of knowing whether the nor-
[fol. 22] mal flow of traffic would be through Bluefield, West Virginia.

Commissioner Hooker: There is no use to question him on that, because the Commission would prefer that the record show, and not get the record confused about one shipment going in and out, but stipulate that all movements did go outside of the State of Virginia.

Mr. Seibert: I would be willing to stipulate that except as to the shipment to Martinsville. All of this evidence indicates that all of these shipments went to Bluefield, West Virginia.

Witness stood aside.

11:25 A. M. Commissioner Hooker: The Commission will recess for ten minutes.

11:40 A. M. The Commission resumes its session.

L. A. KINZER, a witness introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

Direct examination.

By Mr. Seibert:

Q. Please state your name and position.

A. I am Investigator L. A. Kinzer, State Corporation Commission, Division of Motor Transportation. I am stationed in Southwest Virginia at Glade Springs, Virginia.

Q. I believe you made a check of a number of vehicles of the Service Storage & Transfer Company, did you not?

A. Yes, sir.

Q. And you are aware of the ones referred to by the Commission's Rule?

A. Yes.

Q. As quickly as possible, and don't go into too much detail in setting out the cases, will you proceed to state to the Commission what your investigation revealed.

Mr. McInerny: Can't we stipulate as to that?

Mr. Seibert: I think we had better proceed.

[fol. 23] Q. On September eleventh did you check a motor vehicle on Highway 58 near St. Paul, Virginia.

A. Yes, sir, I did.

Q. And that shipment was carried on a White tractor with West Virginia License No. 3341; is that correct?

A. Yes.

Q. Owned by Service Storage & Transfer Company, Inc.?

A. Yes.

Q. Was there a shipment of cotton goods from F. D. Lazenby & Co., Bluefield, Virginia to Haysi Hardward (sic) Company, Haysi, Virginia?

A. Yes, sir.

Commissioner Hooker: On that shipment from Bluefield to Haysi, what route is that?

A. I checked him at St. Paul on Route 58.

Q. You stopped the truck at what point?

A. At St. Paul, going to Haysi.

Q. From Bluefield through to Haysi is in what county?

A. Haysi is in Dickinson County, almost at the line of Buchanan.

Q. Was he coming from Bluefield?

A. He was going toward Haysi from Bluefield, West Virginia. This was picked up at the terminal in Bluefield, West Virginia.

By Mr. Seibert:

Q. He had a shipment of steel plates from the Bristol Steel & Iron Works to Link Belt Company at Carbo, Virginia, did he not?

A. Yes.

Q. And that is in Russell County?

A. Yes.

Commissioner Hooker: Was that going to Appalachia?

A. No, to the Link Belt Company, Line No. 2.

By Mr. Seibert:

Q. What is the distance from Bristol to Carbo?

A. Forty-eight miles.

[fol. 24] Q. Do you know whether that shipment went through West Virginia?

A. Yes, sir, the boy told me he was coming down from Bluefield.

Q. Do you mean to say that the shipment moved from Bristol to Bluefield and back to Carbo?

A. Yes, sir, that is what the boy told me.

Q. And when you picked him up, he was on Route 58 near St. Paul?

A. Yes.

Commissioner Hooker: What is the distance from Bristol, Virginia to Bluefield, West Virginia?

A. Ninety-five miles.

Q. And from Bluefield, West Virginia, how far is it to Carbo, what is that distance?

A. I don't know the exact distance.

Colloquy Between Commission and Counsel

Commissioner Hooker: It might save some time, if it would be agreeable to all parties, if we checked the distances

from the highway map and put them in the record, rather than have them put in in this way.

OFFER IN EVIDENCE

Mr. Seibert: We will file one of the State Highway maps and show evidence of the routes in contrast, and we will file that as the next exhibit.

Commissioner Hooker: That will be Exhibit 1.

Mr. McInerny: I have had one of my witnesses work up some typical illustrations giving the direct mileage and comparing the route as observed by the carrier, but I don't think it encompasses all of them—they are just examples.

Mr. Seibert: I believe it has been stipulated that there have been the movements as shown in the Rule, that these shipments actually moved?

Mr. McInerny: Yes.

Mr. Seibert: And that direct mileage can be determined by Exhibit 1?

Mr. McInerny: Yes.

Mr. Seibert: Since the Rule was issued, there have been some additional shipments that are not in answer to the Rule.

Commissioner Hooker: Is there any question about what Mr. Seibert has stated, that they have gone on and disregarded the formal proceeding of the Commission?

[fol. 25] Mr. McInerny: I think it is a little unfair to say that we have not been placed on notice of those movements.

Commissioner Hooker: Just for the record, to show that that has occurred.

Mr. McInerny: Suppose we make the confession this way, that up to November first of this year, when we were advised by the Interstate Commerce Commission, we continued the traffic, and since November first all shippers have been advised that there is a controversy before this Commission and until that is settled no traffic is being handled in the controversial area. We have a tacit understanding, not binding on either Mr. Seibert or myself, at least with respect to some Virginia traffic moving from one point in Virginia to another point in Virginia, it is

interstate commerce, and that traffic is still being handled by the carrier; but the other, more controversial ones, we have issued instructions to the shippers that that is not going to be handled, and I think it might be desirable for us to get informal advice as to what way to proceed on that during the pendency of the proceeding, so there will be an understanding, both on the Commission's side and on the shipper's.

Mr. Seibert: We have received two letters, one from the Sealy Mattress Company and one from Erwin Supply and Hardware Company, asking that they be allowed to continue shipping by this carrier.

Commissioner Hooker: Have any of these points in controversy been served since November first?

Mr. McInerny: Yes, sir.

Commissioner Hooker: So they have not followed our instructions?

Mr. McInerny: The order went out November the first.

By Mr. Seibert:

Q. Have you had any since November first, Mr. Kinzer?

A. Yes, November sixteenth on Highway 58 in Wise County between St. Paul and Coeburn, Virginia, I stopped an International truck belonging to the Service Storage & Transfer Company, Bluefield, West Virginia, with card marked assigned E-1914, bearing Virginia license T-220690 from Bristol, Virginia. Driver stated that this freight was picked up at the terminal in Bristol, and it had one intrastate shipment.

[fol. 26] Commissioner Hooker: What was the date?

A. November sixteenth.

Q. Quite some time after November first?

A. Yes.

By Mr. Seibert:

Q. Where was he going?

A. To Norton, Virginia.

Q. From Bristol to Norton?

A. No, from Roanoke to Norton.

Q. Is that the only one you have since November first?
A. Yes, sir.

Cross examination.

By Mr. McInerny:

Q. On your report of investigation, which you apparently made at the time, it indicates that there was one intrastate shipment moving from Bristol to Norton, Virginia via Bluefield, West Virginia, and it had a weight of 112 pounds, and it was accompanied in the same vehicle with seventeen other shipments, all of which were interstate?
A. Yes.
Q. Do I understand that since November first that is the only shipment you have found that would be in the controversial area?
A. Since November first.
Q. Do you know who the shipper was on that shipment?
A. It is on that bill.
Q. Double Envelope Corporation at Roanoke to Norton, Virginia. I am a little confused with respect to the shipment you mentioned. Does it not indicate that the origin point was Roanoke, Virginia rather than Bristol?
A. It was from Roanoke and picked up at the terminal in Bristol.

Commissioner Hooker: Brought to Bristol by Rutherford?

A. No.
Q. How did it get to Bristol?
A. Probably by Service Storage & Transfer Company from Roanoke to Bluefield, and from Bluefield, West Virginia to Bristol, and then it was put on this truck to service it.

[fol. 27] By Mr. Seibert:

Q. That is an assumption on your part, but, so far as you know, it left Bristol terminal of the defendant on the truck which picked up the shipment in Bristol?
A. Yes.

By Mr. McInerny:

Q. At any rate, this traffic originated at Roanoke and was consigned to a consignee at Norton, and whatever terminal handled it, you don't know or cannot say, because you don't know whether it was routed to the Bluefield terminal and then to Bristol?

A. No, I cannot say. The only thing the driver stated was that it was picked up at the Bristol terminal.

Mr. McInerny: Since no definite information can be shown with respect to the actual routing of these shipments, I assume counsel will agree that at least the point in here is among the points we had considered in the past not too controversial.

Mr. Seibert: I will state to the Commission what is involved in it later, but, according to this witness, this shipment went to a terminal in Bristol and was handled at the Bristol terminal and the shipment was made from the Bristol terminal; whether it went to Bluefield, West Virginia prior to the time it was handled at the Bristol terminal, I do not know.

By Mr. McInerny:

Q. On all the trucks you inspected, did you find that, in the main, the freight consisted of what is known as "L.T.L. freight shipments," small shipments, sir?

A. Yes.

Q. Ranging in weight, possibly, from as little as thirty-five pounds to as much as five thousand pounds in some cases?

A. Yes, sir.

Q. Did you ever encounter a vehicle of the Service Storage & Transfer Company from one Virginia point to another Virginia point laden with a single-volume shipment in excess of fifteen hundred or two thousand pounds?

A. No, sir.

Q. And when you did stop these vehicles and investigate them, you found that the vast majority of the freight on the [fol. 28] various vehicles consisted of movements from one state to another state, and only a few small number consisted of movements from one point in Virginia to another point in Virginia?

A. I have checked some that had four Virginia movements.

Q. Out of a total of how many?

A. Of twenty-five interstate shipments and four intrastate shipments.

Q. Would that be about the maximum that you would encounter on a single vehicle?

A. It would run three or four, or thereabouts.

Q. And the remaining twenty-five would all be interstate movements?

A. Yes.

Redirect examination.

By Mr. Seibert:

Q. Your operations in checking these vehicles were in your ordinary operations as Investigator, and you did not make a special check? That does not mean that these were the number in your territory, but the ones you happened to run up on?

A. Yes.

Colloquy Between Commission and Counsel

Mr. Seibert: If the Commission please, you will remember that at the beginning of the case I stated that Mr. Randolph Harrison and I had tentatively considered that we might agree on a line of demarcation where it might be considered interstate and where our investigators would not pick up these people, and I also stated that if he would go to his people and take the matter up with them, I would take it up with the Commission and get them to decide the issue, and in order for the Commission to have what was in our minds, I felt that we should state that there were some shipments that were moving normally through Roanoke, and on those shipments it was our thought—and, of course, I had no right and have no right now to say that the Commission would consider that what we thought was right—but that from Roanoke we would consider the main Highway No. 19 and 460 running through North Tazewell and thence 19 to a connection with Highway 82 and thence

[fol. 29] over Highway 71 to Dickinson County, and thence through Highway 58 through St. Paul to Norton and thence Highway 23 to the Kentucky State Line, on that line we would consider a shipment interstate or intrastate north of that line. If the shipment was handled by the Service Storage & Transfer Company, we would not pick him up and bring him before the Commission.

Commissioner Hooker: That was the dividing line?

Mr. Seibert: That would be the dividing line, if accepted by the Commission, not as a legal question, but in that territory our investigators would allow them to go.

Commissioner Hooker: And south of that would be an abnormal operation?

Mr. Seibert: South of that would be an abnormal operation.

Commissioner Catterall: But on Route 19 you would let them go ahead?

Mr. Seibert: Any of the shipments on that would be intrastate or interstate, but I only stated that it would be considered.

Commissioner Hooker: Do they have a certificate of regular route operation?

Mr. Seibert: Here is Exhibit 4 in the previous case, No. 13074, which is their certificate of public convenience and necessity, and it reads: "General commodities, except those of unusual value, and except dangerous explosives, household goods as defined in "Practices of Motor Common Carriers of Household Goods," 17 M.C.C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, over irregular routes.

"Between Bluefield, Va., Bluefield, W. Va., and points and places within five miles of Bluefield, W. Va.

"Between Bluefield, Va., and points and places within five miles of Bluefield, Va. and those within five miles of Bluefield, W. Va., respectively, on the one hand, and, on the other, points and places in that part of Virginia and West Virginia within 75 miles of that territory.

"Between Bluefield, W. Va., on the one hand, and, on the other, points and places in West Virginia, that part of Virginia west of U. S. Highway 29 and south of U. S.

Highway 60 including points and places on the indicated portions of the highways specified, and that part of Vir-
[fol. 30] ginia north of U. S. Highway 60 which is within 80 miles of Bluefield, W. Va."

Here is what happened. Under the ruling of the Interstate Comerce (sic) Commission, Bluefield is the terminal point, and they can bring anything into Bluefield from this territory.

Commissioner Hooker: Providing it is from outside of the State.

Mr. Seibert: Yes, and serve anywhere from 75 miles. That is the position taken by Mr. McInerny.

Commissioner Hooker: That does not mean that they can take a shipment at Bluefield, Virginia and move it to Tazewell. That certificate is to protect competing carriers to and beyond that zone who already hold interstate authority.

Mr. Seibert: That is a matter for the interpretation of the Commission.

Commissioner Hooker: But that does not give them authority to transport a piece of freight from Bluefield to Tazewell intrastate.

Mr. Seibert: It would not authorize from Bluefield, Virginia, but they can from Bluefield, West Virginia into this territory. You will notice it says:

"Between Bluefield, W. Va., on the one hand, and, on the other, points and places in West Virginia, that part of Virginia west of U. S. Highway 29 and south of U. S. Highway 60 including points and places on the indicated portions of the highways specified, and that part of Virginia north of U. S. Highway 60 which is within 80 miles of Bluefield, W. Va."

After reading that certificate, we thought we could use a mile south of that, for the traffic coming from points on U. S. Highway 29 and south of U. S. Highway 60, but, if this has to go through Bluefield, I can only agree now to this particular line here, because it has to go through Bluefield.

Commissioner Hooker: That must be the normal route for it to be transported.

Mr. Seibert: It must be the normal movement through Bluefield, West Virginia.

Commissioner Catterall: No back hauls.

Mr. Seibert: No, sir.

[fol. 31] Mr. McInerny: I don't want to impose on the Commission, but——

Commissioner Hooker: They have ignored the agreement by going ahead and operating over it.

Mr. Seibert: There was no agreement, but it was to be submitted.

Mr. McInerny: May I clarify that?

Commissioner Hooker: I don't consider it necessary.

Mr. McInerny: Mr. Harrison felt compelled to refer it to the Interstate Commerce Commission, and, after we did that, we again proposed, by letter of October 24, 1956, I think counsel has a copy of that, and I would like to have that added to the record.

Commissioner Hooker: It is in the record.

Mr. McInerny: It is part of the Commission's record?

Commissioner Hooker: Yes, October 22, 1956.

Mr. McInerny: My letter is dated October 24, 1956, and includes copies of letters from the Interstate Commerce Commission.

Commissioner Hooker: Proceed with the evidence.

Witness stood aside.

W. C. ECHARD, a witness introduced on behalf of Defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. McInerny:

Q. Mr. Echard, please identify yourself, stating your full name, the name of the company with which you are associated, and the position you hold with that company.

A. I am W. S. Echard, Bluefield, West Virginia. I am General Manager of the Service Storage & Transfer Company, Inc.

Q. Would you outline the scope of your duties as General Manager.

A. Well, I manage the operation of the Service Storage & Transfer Company, at the Home Office, which is Bluefield,

West Virginia, and their outlying territories I supervise the operations of, also.

[fol. 32] Q. Do you actively have supervision of the operations and details of the running of the company?

A. I do.

Q. For how long have you been associated with the Service Storage & Transfer Company?

A. Four years.

Q. Prior to that time did you have any experience in the motor carrier field?

A. Yes.

Q. How long was that?

A. Fifteen years.

Q. Since the time you have been associated with Service Storage & Transfer Company, has it held identically the same authority from the Interstate Commerce Commission as it presently holds?

A. Yes.

Q. At the time you went to work for Service Storage & Transfer Company, did you happen to have the opportunity to examine the books and records of the company which reflected their past operations?

A. Yes, sir.

OFFERS IN EVIDENCE

Q. We have mentioned a certificate which the company holds from the Interstate Commerce Commission. Do you have a copy of that before you?

A. I do.

Mr. McInerny: May I have this identified as the next exhibit?

Commissioner Hooker: It will be received as Exhibit No. 2.

By Mr. McInerny:

Q. Do you have with you also a copy of the map which pictorially reflects the authority set forth in Exhibit 2?

A. Yes, I do have.

Mr. McInerny: May I have this identified, Mr. Commissioner?

Commissioner Hooker: That will be received as Exhibit No. 3.

[fol. 33] By Mr. McInerny:

Q. Would you refer to the certificate, sir, and, looking at the second paragraph under the first commodity description, would you indicate what that authority authorized your company to do, as you have been advised by the Interstate Commerce Commission, just the second paragraph.

A. It authorizes us to move freight between Bluefield and points and places within five miles of Bluefield, West Virginia.

Q. Bluefield, West Virginia?

A. West Virginia, on one hand, and points and places within five miles of Bluefield, West Virginia, and between Bluefield, West Virginia, on the one hand, and on the other points and places in West Virginia and that part of Virginia west of U. S. Highway 29 and south of U. S. Highway 60, including points and places on the indicated portions of the highways specified and that part of Virginia north of U. S. Highway 60 which is within eighty miles of Bluefield, West Virginia.

Q. I believe you referred to the third paragraph, but go back to the second paragraph and advise what that allows you to do.

A. "Between Bluefield, Va., and points and places within five miles of Bluefield, Va., and those within five miles of Bluefield, West Virginia, and deliver it to other points, either other, points and places in that part of Virginia and West Virginia within 75 miles of that territory."

Q. For clarity and ease of disposition, do you conduct operations under those two authorities by interchanging with yourself, so to speak?

A. Yes, we do.

Q. In other words, you pick up traffic in Virginia under the second paragraph and bring it through Bluefield, West Virginia, and deliver it to other points, either in Virginia or West Virginia, described in the third paragraph?

A. Yes.

Q. And you use those two authorities in combination? Is it correct to state that it is something like two carriers interchanging, one with the other, although in this case both are owned by the same carrier?

A. Yes, I would say it is almost identical to that.

Q. Can you refer to the map before you and, take Lynch-
[fol. 34] burg, for example, that is on the authority you have described in the second paragraph; is that correct, sir?

A. That is correct.

Q. And you would pick up a shipment there and bring it to Bluefield, West Virginia, and when you got it there you would put it on the authority, so to speak, described in the second paragraph and deliver it to the point, say a point like Draper, which is one of the points at issue in this proceeding?

A. That is right, sir.

Commissioner Hooker: Do you know that of your own knowledge?

A. I know that of my own knowledge. That is the only way we operate.

Q. You do know that of your own knowledge?

A. I have documents to prove it.

Q. That is the only way you know it, because of the documents you have?

A. Yes, I did not follow the particular shipments.

By Mr. McInerny:

Q. In the practice of your company in the keeping of its books and records where you have traffic moving from one Virginia point to another point, how do you, as General Manager of the company, ascertain that the Bluefield, West Virginia, gateway is observed on traffic moving from Roanoke to Southwestern Virginia; do you have books and records to reflect that?

A. We have a standard operational procedure that directs all operations, and we expect all employees, of course, to follow those operation procedures, and in that operating procedure, it explains what has to be done with a shipment from origin to delivery.

Q. Are these documents the ones that are required to be kept by the Interstate Commerce Commission, such as your delivery receipts and manifests?

A. Yes, sir.

Q. And are those dates stamped upon receipt by your driver?

A. Yes.

Q. And upon receipt by the driver of the delivery, is the delivery stamp put on those?

[fol. 35] A. Sometimes the driver does write the date, but we do have a delivery stamp. When the driver checks in from his run, then that is stamped on the date of the delivery.

OFFER IN EVIDENCE

Q. Did you prepare at my request an outline of the information concerning employees and equipment and company location?

A. Yes.

Q. Have you a copy of that before you?

A. Yes.

Mr. McInerny: May I have this marked Exhibit 4.

Commissioner Hooker: That will be received as Exhibit No. 4.

By Mr. McInerny:

Q. Did you prepare this or have it prepared under your supervision from the books and records of the company?

A. Yes.

Q. Would you describe what your ternimal (sic) operations are, first, at Bluefield, West Virginia?

A. Well, we operate a total of 74 pieces of equipment at that terminal; a passenger car; one pick-up truck, two open-topped straight trucks, eleven van straight trucks, twenty-two tractors, eight open-topped trailers, and twenty-nine van trailers.

Q. In the use of that equipment, do you conduct what is known in the trade as "peddler runs"?

A. Yes.

Q. Under what arrangement do those peddler runs expand from your Bluefield, West Virginia terminal? Do you have fixed areas of operation radiating out of Bluefield?

A. I would not say they are "fixed," but we do have operations on peddler runs within a radius around Bluefield operating through the Bluefield terminal.

Q. In addition to your peddler runs, do you have what might be described as "over the road" operations between Bluefield and your other points?

A. Yes.

Q. What is the limitation of that operation of those at Roanoke and Bluefield, West Virginia? Can you give us a pattern of your operations?

[fol. 36] A. We operate, of course, and dispatch trucks from the Bluefield terminal to Roanoke.

Q. What is the consist of those generally; can you describe the traffic it serves?

A. Less truckload shipments. A very small percentage of it is truckload.

Q. And when the vehicle arrives at Roanoke, with the vehicle consisting of less truckload shipments, what disposition is made of it?

A. It is broken down in the terminal at Roanoke and loaded on the peddler run trucks and delivered into the local area.

Q. On operations from your Roanoke terminal back to the Bluefield terminal, would that be substantially the same as you have described in the eastbound delivery to Roanoke?

A. It is practically the same, with this exception, that, of course, they dispatch the over-the-road trucks or trucks pulling the freight from Roanoke to Bluefield, and, of course, when they are broken down at Bluefield we are also receiving shipments from all other trucks over the roads that Service Storage & Transfer Company operate over, and all of that is combined at Bluefield and filed out to the other terminals and also for peddler runs out of the Bluefield terminal.

Q. On traffic moving from Roanoke to Bluefield, West Virginia, is it broken down, so to speak, and mingled with other traffic arriving from other over-the-road points, such

as Charleston, West Virginia and Huntington, West Virginia?

A. Yes.

Q. Do you make up complete loads from the consist of the two movements and dispatch it to the Southwest Virginia points?

A. Yes.

Q. Will you describe what the relationship is between your Bluefield, West Virginia terminal and Bristol, Virginia terminal?

A. Well, we dispatch tractor trailer units from the Bluefield, West Virginia terminal to the Bristol terminal for the freight to be delivered in the Bristol area.

Q. What do you describe as the "Bristol area"? What area do you find most effectively served out of Bristol?

A. The adjacent area to Bristol and Southwest Virginia and Kentucky.

Q. Could you describe it by reference to the map, sir? [fol. 37] A. Our Bristol terminal delivers out Route 58 through the southwest portion of Virginia, on back into that area, and they deliver up to, I guess, near Saltville. We will deliver to Saltville either out of the Bluefield or the Bristol terminal, depending on which has the heavier flow of freight, and Saltville and St. Paul are the breaking points for the two terminal delivery points.

Q. And do I understand that the traffic north of that line you have just described is generally handled out of the Bluefield terminal direct?

A. Yes.

Q. At this point I think it might be helpful to refer to the shipment of November sixteenth that Mr. Kinzer discussed. The bill he has duplicated shows it was a movement from Double Envelope Corporation, located in Roanoke, Virginia destined to the First National Bank of Norton, Virginia. From his evidence it would appear that the traffic may have been handled first at the Bluefield, West Virginia gateway and then by your Bristol terminal. Can you explain, based on your knowledge of your own company's operations, what in all likelihood happened in the transportation of that shipment, from origin to destination?

A. It would move from Roanoke to Bluefield, West Virginia, along with other shipments to make up a load. If we

have too much freight, which we usually do, in that load of freight there is probably freight consigned to Charleston and numerous other places.

Q. Charleston, West Virginia?

A. Yes, and Beckley and beyond, but it is broken down at Bluefield, and the freight from Bristol will be loaded on a Bristol truck for the Bristol area, and we will move it from Bluefield, West Virginia to the Bristol terminal with a tractor-trailer, and there it will be broken down and loaded on the peddler run trucks for the area to which it is to be delivered.

Q. Since the time you have been with the company, has your company consistently held itself out in the same pattern to perform the same type of operations, or has there been any change in the recent past?

A. There has been no change in the recent past, until the quite recent past, as of November first.

Q. Prior to the time you came with the company, do the records of the company reflect, on your investigation of [fol. 38] them, Mr. Echard, whether the prior owners were conducting operations from one Virginia point to another Virginia point through Bluefield, West Virginia?

A. Yes, they did.

Q. And during the four years' time you have been with the company, have you held yourself out as willing to do that and have you done it?

A. We have.

Q. Can you state from your knowledge of your company's operations whether all traffic movement from one place of authority to another place of authority in your certificate actually observes the Bluefield, West Virginia gateway?

A. Definitely, it does. It is the only way we can handle the freight, because all of our billing is done at Bluefield, West Virginia, because we have no other facilities at any other terminal to do it.

Q. I ask you whether there has been any investigation by the Interstate Commerce Commission or other officials with respect to your observing the legal procedure with regard to this operation?

Mr. Seibert: I don't think that is material.

By Mr. McInerny:

Q. There has been reference to the fact that routes on some of the freight carried by you are more circuitous than other routes. Do you agree that some of your traffic moves over highways that are less direct than the most direct routes?

A. Yes.

Q. Do you have that sort of traffic between Virginia and West Virginia, on the one hand, as well as traffic to Virginia points?

A. Yes.

OFFER IN EVIDENCE

Q. At my request, did you select some typical illustrations of traffic handled, first, between the point in Virginia on one hand and the point in West Virginia on the other?

A. Yes, I did.

Mr. McInerny: May that be marked as the next exhibit?

Commissioner Hooker: It will be received as Exhibit No. 5.

[fol. 39] By Mr. McInerny:

Q. Would you explain that exhibit; first, it indicates that from Covington to Beckley on the most direct highway is 98 miles, and as you operate it from Bluefield it is 156 miles. Notwithstanding your circuitous route, are you presently engaged in handling traffic from Covington to Beckley?

A. Yes, we are.

OFFER IN EVIDENCE

Q. Did you also make an analysis showing a comparison between mileages required to be traversed in serving representative points?

A. Yes, I did.

Mr. McInerny: May I have that marked as the next exhibit?

Commissioner Hooker: That will be received as Exhibit 6.

Mr. Seibert: So far as Exhibit 5 is concerned, I have not objected to it. I don't think it is material to this case. We

are not interested in what West Virginia does or does not do.

By Mr. McInerny:

Q. In preparation of Exhibit 6, Mr. Echard, would you state what maps you used as references?

A. We used the Virginia official map.

Q. And do these figures show the direct highway mileage first in the left-hand corner?

A. Yes, the direct mileage is in the lefthand corner.

Q. The first item is Roanoke to Tazewell, and it shows the mileage directly as 131 miles, and the mileage as you operate it is also 131 miles?

A. That is right.

Q. Are there any other similar situations, other than those shown on that exhibit that you could identify, points in the Tazewell area?

A. You mean give the mileage?

Q. No, name the towns.

A. Well—you mean in the Tazewell area?

Q. Yes.

A. There would be North Tazewell and South Tazewell, which is the same town, but there is no other town close to Tazewell that we serve.

Q. What was the purpose of developing the information shown on Exhibits 5 and 6?

[fol. 40] Mr. Seibert: If he is going to give any value to Exhibit 5, I ask that it be withdrawn.

Mr. McInerny: I didn't know that there was objection to it.

Commissioner Hooker: What is the purpose of it?

Mr. McInerny: One of the purposes is to show that we are operating in good faith, and it was indicated by Counsel for the Commission that the circuitous mileage alone is one of the elements to be considered, and we are trying to show good faith, and it is shown that the Interstate Commerce Commission operations from one state to another, where we are operating on a circuitous route, that these routes do not govern the practical feasibility of the movement. I will develop that operations can be conducted circuitously in

regard the less truckload traffic, and the operations to West Virginia is no different than that conducted between Virginia points.

Commissioner Hooker: I don't see that West Virginia has any bearing on Virginia, and you all have agreed that the highway map which indicates the distance is the one to be used.

Mr. McInerny: I had done that, but before I did that I had prepared this statement.

Commissioner Hooker: You can put them in, and if they have any value we will give them consideration.

By Mr. McInerny:

Q. Will you state, Mr. Echard, as it relates to your operations, what effect, if any, does circuity in the operation, some excess mileage, as reflected in the exhibit, what effect that has on the feasibility or practicability and profitability of your company's operations.

A. Even though we could take a more direct route if we were going to move a shipment from one point to another point, the feasibility of it is to move freight into the "break bulk point" and fan out from that point the freight going to other areas, combining freight from Charleston, Covington, Beckley, and Roanoke at Bluefield and moving it into the Bristol terminal for handling there.

Q. In other words, do I understand your testimony to mean that, because there is a volume of less truckload traffic, you can handle other shipments without making your shipments unprofitable or impractical?

[fol. 41] A. Yes. If you could move it down 11 from Roanoke to Bristol, which we can't do legally, but if we could, so far as our operation is concerned, it would give better service to move it through Bluefield because of the flow of freight.

Q. What do you mean by "flow of freight"? Do you mean the flow of freight from Bluefield?

A. We have 4,000 pounds from Roanoke to Bristol, for example, and we move that 4,000 pounds with other freight in trailer loads to points west and southwest to Bluefield, and when you get to Bluefield that 4,000 pounds will move

in conjunction with other freight we combined to Bristol in truckloads.

Q. And if it were to move directly from Roanoke to Bristol, it would move simply at a 4,000 pound shipment?

A. It would move as a 4,000 pound shipment, or you could not move it until you had another shipment, which would delay the shipment.

Q. There would not be enough traffic to justify the operation?

A. That is my view.

OFFERS IN EVIDENCE

Q. Did you prepare some information as to how much of your company's traffic consists of movement from one Virginia point to another Virginia point, as contrasted to your other operations?

A. Yes, I did.

Q. Will you state what period that covered?

A. One period was from June 18, 1956 and ending June 23, 1956. The other period was beginning August 13, 1956 and ending August 18, 1956.

Mr. McInerny: May I have those marked as exhibits?

Commissioner Hooker: They will be received as Exhibits 7 and 8.

By Mr. McInerny:

Q. Are these weeks fairly representative of your entire year's operation as they are broken down, percentagewise?

A. I think so. I tried to get it that way.

Q. Would you indicate whether or not the three per cent of all shipments shown on Exhibit 7 would fairly reflect the total your company handles in the period of a year?

A. Yes, sir, that is what my figures reveal, and I think that is right.

[fol. 42] Q. And does that reflect also the amount you have handled since you have been with the company? Is it your opinion that you have handled just about that amount?

A. Somewhere around that; probably close to that.

Q. Does your company do any advertising in the Virginia

area showing that you hold out your service from Virginia points to another Virginia point to the shipping public?

A. Certainly not.

OFFERS IN EVIDENCE

Q. Does your company distribute what is known as "routing guides"?

A. Yes.

Q. Do you have a copy of those with you?

A. I have a routing guide which we supply the Roanoke terminal with.

Q. Are those distributed to shippers in the area?

A. Yes.

Mr. McInerny: I have these available for exhibits, but they are so bulky that, if we could explain the purpose of bringing them without offering them, I think it would be well.

Commissioner Catterall: It stands to reason you would not have the movement unless you advertised for it.

Mr. McInerny: We have the demand from the shipper.

Commissioner Hooker: The shipper is not supposed to know whether you are violating the law or not.

Mr. McInerny: We are aware of that, but I want to show that we have the demand, and I want to show Counsel and the Commission——

Commissioner Hooker: Put it in as Exhibit 9.

By Mr. McInerny:

Q. You have the first one as the routing guide at Bristol?

A. No, this is Roanoke.

Commissioner Catterall: Is this to prove that, because the shippers want the service, it makes it legal?

Mr. McInerny: No, the only purpose is to show what the carrier holds out, and it states in the first page of the guide that it is only applicable on interstate traffic, and the shippers are advised that this traffic goes through Bluefield, West Virginia, and there is no holding out to shippers that this traffic moves from one point in Virginia to another point in Virginia. I want to show that it is moving on interstate bills of lading and charges.

[fol. 43] Commissioner Hooker: I don't see how that would be material.

Mr. Seibert: It was admitted in the letter.

Commissioner Hooker: The shipper has no responsibility in this matter.

Mr. McInerny: Without putting in the exhibits, may I have it conceded that that is a fact?

Commissioner Hooker: File it for what it is worth, if it is worth anything.

Mr. McInerny: May we have them marked?

Commissioner Hooker: They are filed for what they are worth.

By Mr. McInerny:

Q. Are the routing guides to which we have just referred the type of material that you distribute, or your terminal employees distribute, to the shippers in the area?

A. Yes, sir.

Q. Do those materials contain information that all traffic moving between points shown in the routing guide must move in interstate commerce?

A. Yes.

Q. On what page is that shown?

A. The first page.

Q. And what is the language?

A. "Applicable only on interstate traffic."

Mr. Seibert: I don't think the shipper is interested in whether it goes interstate or intrastate.

Commissioner Catterall: Does he not have to pay more if it goes interstate?

Mr. Seibert: Sometimes he does, and sometimes he does not.

Commissioner Hooker: If you want to mark those filed as exhibits, we could have them filed as Exhibits 9 and 10. Let them go in as Exhibits 9 and 10.

By Mr. McInerny:

Q. How long have you circulated such routing guides to the shipping public your company serves?

A. For the entire period I have been there, but, of course, the guides I first used were carried over from the other company, the original owners, and we have been preparing this type of guide for about three years.

[fol. 44] Q. And all the traffic moving, without regard to under what authority it is moved, the charges are based on tariffs filed with the Interstate Commerce Commission, are they not?

A. Yes, sir.

Q. At my request, did you prepare from your original records photostatic copies of the delivery receipts and manifests covering the shipments referred to in the Rule issued by the Commission?

A. Yes.

Q. And do you have those with you in the Hearing Room?

A. Yes.

Q. And do you also have for counsel's inspection the originals from which these were photostated?

A. I do.

Q. Will you refer to the first one, the shipment moving from Roanoke, Virginia to Glen Lyn, Virginia, and indicate how you can be assured that all of this traffic comes through Bluefield, where it is broken down and redisbursed from Bluefield?

A. Freight that is loaded at the Roanoke terminal is loaded from the bill of lading. Since we do not do any billing at any terminal except Bluefield; we do billing only at the Bluefield, West Virginia terminal. There is a manifest made up at the Roanoke terminal showing the shipment, the consignee and the consignor's address, and it carries the bill of lading number on that shipment on this manifest.

Q. Then, when the shipment arrives at the Bluefield, West Virginia, terminal, is it marked with the terminal stamp of any type?

A. Yes, it is marked with a stamp showing the date received and what terminal received it.

Q. And does that practice assure your company and you personally that the traffic involved does move through Bluefield, West Virginia, on each occasion?

A. Yes, sir.

Q. You understood, as General Manager of your Company, that there has been a past controversy as to the type of business your Company is conducting from one Virginia point to another?

A. Yes.

Q. And you further understood that under one Rule the Company had paid a fine and no further action was taken, did you not?

A. Yes.

[fol. 45] Q. Then the second Rule was issued, the one involving these shipments today, and you knew that there was some discussion by Mr. Harrison with this Commission?

A. Yes.

Q. Were you advised, or did you advise your people, with respect to what traffic they could continue to accept at various terminals moving from one Virginia point to another and which traffic they would be required to reject?

A. Yes.

Q. When did you issue those instructions to your terminal employees, the approximate date?

A. Right around November first.

Q. So far as you know, is there any traffic moving now via Service Storage & Transfer Company from one point in the contested Virginia area to another point in the contested Virginia area?

A. Not to my knowledge, Sir. To my knowledge, there may have been some shipments the driver picked up in error, by not understanding what he could and could not pick up, and it was returned to the shipper.

Q. In addition to informing your employees as to what traffic they could accept in the future, pending the disposition of this case, did you also have them advise the shippers who had previously used your service from one Virginia point to another Virginia point?

A. Yes.

Q. How many shippers, in all, did you advise, and how did you advise them?

A. We advised them through the terminal managers, and I personally called on quite a few of them.

Q. What was the reaction of the shippers generally?

A. They insisted that we continue to move the freight and wanted us to move it.

Q. Did you inform them of the pendency of this proceeding?

A. I did.

Q. And, notwithstanding their desires for the transportation of their freight, have you declined all that we determined to be objectionable?

A. Yes.

Q. Referring again to the documents which you have before you, to the manifests which accompany the freight [fol. 46] bills in each case, do they show the preponderance of traffic handled is moving in interstate commerce, that is, between a Virginia point on the one hand and an out-of-state point on the other hand?

A. Very definitely.

Q. Have you been advised by any member of the shipping public as to what action they took, if any, as to being informed as to the Commission's hearing on this rule?

Mr. Seibert: I don't believe information as to what action the shipper would or would not take or what action the shipper believes is legal or not has anything to do with this matter, and I object to the question.

Commissioner Hooker: The objection is sustained.

By Mr. McInerny:

Q. The two shippers that have an interest in this proceeding accompanied you to the Hearing Room?

A. Yes.

Q. And is the testimony to be offered through them substantially identical to the communications of other shippers that you have seen sent to the Commission?

Chairman King: That is not relevant.

Commissioner Hooker: The shippers could not possibly have anything to do with this case. They might be interested in the service, but that is not the issue before us.

Mr. McInerny: I understand that there is no question of convenience and necessity, but the reason I thought it advisable to have a group of shippers appear was to state that they intended it to be interstate, that they knew it was

interstate, that they intended to ship it interstate, and their intention certainly has something to do with the matter.

Commissioner Hooker: Their intentions do not change the law.

Mr. McInerny: Their intentions according to the Interstate Commerce Commission's law.

Mr. Seibert: It is not the intention of the shipper that is the governing point, but the law.

Mr. McInerny: On those cases where shipments move from one state to another state or where the original consignor had the intent of interstate shipment, that certainly [fol. 47] has a bearing on whether the traffic is interstate or not; and that was the purpose I had in having the two representatives here, both of which have this understanding.

Commissioner Catterall: How about that case in Chicago where one of those shippers there said it was interstate commerce, and the shipment went all the way to California? I don't see how they could throw any light on this case whatever.

Commissioner Hooker: I don't suppose the shippers care whether it goes interstate or intrastate. They just want to get their goods delivered where they send it.

1:00 P. M. Commissioner Hooker: The Commission will recess for lunch until two o'clock.

2:00 P. M. The Commission resumes its session.

Mr. McInerny: May I make inquiry on one or two other elements before I tender him for cross examination?

Commissioner Hooker: Certainly.

By Mr. McInerny:

Q. Mr. Echard, your Company at one time participated in the movement of certain traffic originating in Richmond, Virginia and destined to Tazewell, Virginia, did it not?

A. Yes.

Q. What did that traffic consist of?

A. It was foil moving from Reynolds Metals to the Micamold Corporation at Tazewell.

Q. Can you identify the character of the carrier or carriers that originated the traffic at Richmond?

A. Yes, it was Wilson and Brooks.

Q. And at what point did you receive that traffic?

A. Roanoke.

Q. And did you move it, then, from Roanoke through Bluefield, West Virginia, to destination?

A. Yes.

Q. Can you give me an estimate of the total mileage traversed from Roanoke to Tazewell via the route you employed?

A. 130 miles.

Q. Were you advised that that shipment was regarded by officials of the State Corporation Commission as an intrastate movement?

[fol. 48] A. No, I was not advised.

Q. Did you receive information that led to the cessation of that movement by your Company?

A. Yes.

Q. Where did you receive that information?

A. From the manager of the Micamold Corporation at Tazewell.

Q. Look at the map, sir, and indicate generally, first, the mileage by your route, and, secondly, the mileage via the most direct intrastate route, without regard to whether or not the carrier is authorized to serve over the most direct intrastate route. Beginning at Roanoke, will you trace the highway.

A. We would follow from Roanoke, Virginia, Route 460 to Bluefield, West Virginia.

Q. And that is 130 miles?

A. No, not from Roanoke. It is 107 miles.

Q. And what is the distance from Bluefield to Tazewell?

A. Approximately twenty to twenty-one miles.

Q. On the so-called "normal" or most direct routing, wholly within the State of Virginia over highways—it would be traversed beginning at Roanoke, because that is the point you picked it up; isn't that correct?

A. That is correct. It would be Route 11, in my opinion, to Wytheville, and then Route 52, I think. There is some question in my mind as to what highway you could travel, and I presume you would probably have to travel over Route 263.

Mr. Seibert: You take 11 to Wytheville, 52 to Rocky Gap, and 61 to Burks Garden, and then to Tazewell.

A. Yes, when 61 is completed. I don't believe it is completed all the way now, but when it is completed that would be the normal route.

By Mr. Seibert:

Q. Would that be the logical route?

A. If you were staying wholly within the State of Virginia.

By Mr. McInerny:

Q. Based on the knowledge of the distances you have given, what do you conclude as to the relative distances, first, the routes you traversed there and, secondly, the route wholly within the State?

[fol. 49] A. I think it would be better to go over our route than over the all-Virginia route.

Q. Your routing would be more normal or more direct, in your opinion?

A. Yes.

Q. How long did you participate in that traffic, if you remember?

A. Approximately a little better than a year, I believe.

Offer in Evidence

Mr. McInerny: If the Commission please, I do desire to submit these documents as exhibits, because they give the details, but, if I may have your permission, I would prefer to have them in somewhat better order and also retain a copy for my files. May I submit them as late-filed exhibits?

Commissioner Hooker: Exhibit 11 will be reserved for them.

By Mr. McInerny:

Q. With respect to the aluminum foil movement we have just discussed, do you desire to participate in that movement?

A. Yes.

Q. And would you participate in it if the shipper had not been advised to cease the movement from Richmond with your Company and have it shipped by a carrier from Richmond?

A. Yes, we would continue to handle it.

By Mr. Seibert:

Q. In connection with this Tazewell movement, you were informed that the shipper, and the shipper also was advised that you could not handle it to Tazewell, and were you informed that the shipper was informed that the matter was before the Commission and that he had been informed that you had been advised that that shipment would be considered an intrastate shipment?

A. No.

Mr. McInerny: We did have correspondence, and I have no objection to your reading the letters of ours in which they advised Mr. Harrison concerning the movement.

Mr. Seibert: And they were advised that until the matter was definitely determined by the Commission we would have to stick to our original ruling, or something to that effect.

[fol. 50] Mr. McInerny: Yes, I have a duplicate of that letter. It is very illegible, but this is, in effect, what was said. I believe you concluded in your last paragraph:

"Tazewell can very easily be handled from Roanoke intrastate, and in view of the case pending before the Commission, it should resolve this whole question, and I would not like to make any change which would have any bearing on that case."

That is signed by Mr. Seibert and addressed to Mr. Harrison of Smith's Transfer Corporation.

Cross examination.

By Mr. Seibert:

Q. Now, in connection with this map which you filed as an exhibit showing your routes, I believe you say that

you have certain rights supported by a copy of your certificate issued by the Interstate Commerce Commission for delivering at points within your route?

A. Yes, I would say that is correct.

Q. Is Rocky Mount, Virginia, a point within your rights?

A. Yes.

Q. Now, if you had a shipment, would you think you could handle a shipment from Danville to Rocky Mount?

A. Yes, I think I could.

Q. How could you take it?

A. To Bluefield, West Virginia, and back to Rocky Mount.

Q. And you would consider that to be good service?

A. I would consider it to be good service, if properly handled.

Q. One of the shipments referred to in the Commission's Rule, in fact, two of them, are from Bristol Steel and Iron Company, Bristol, Virginia, to Wise County Courthouse, and your statement shows that the distance direct is 175 miles and the mileage through Bluefield is 267 miles.

A. Yes, I agree with that.

Q. Do you say you can handle shipments for 267 miles as cheaply and as well as you can for 175 miles?

A. No, certainly not, if you put it that way; you can [fol. 51] handle one shipment for so many miles at so much money. I would not say that you can handle it as cheaply.

Q. You hold yourself out as a common carrier to handle freight as cheaply and with as good service as possible?

A. If it is handled with other freight, it is.

Q. I did not say that, but you hold yourself out, from Bristol to Wise, to handle that?

A. Yes.

Q. How do you base your costs?

A. On mileage.

Q. What is your average mile cost?

A. Forty-six cents, approximately. That was what it was the last time I checked.

Q. And you use that as a rate base and base for any other purposes?

A. Not necessarily as a rate base.

Q. What do you use it for; isn't that a part of your rate base?

A. Certainly as a part of it, yes.

Q. Do you think you could handle a shipment from Bristol to Norton, 70 miles, as cheaply as you could for 262 miles?

A. That would depend on the operation.

Mr. McInerny: May it please the Commission, in the form the question is in, it is not complete. In his direct examination he testified that there was a difference in handling less truckload traffic and truckload traffic. If the question is conditioned so he can explain the less truckload traffic and through traffic, he has a right to do that.

Mr. Seibert: This is a less truckload movement, and he holds himself out as a common carrier, and he would have to handle one shipment from Bristol to Norton if he was so instructed; isn't that right?

A. Yes, if that was all the freight we had moving?

Q. Now, this circle here is an 80-mile circle?

A. That is right.

Q. In the western part I notice a green and red circle and then another green circle. What is the green circle?

A. The green circle represents the eighty miles from Bluefield.

[fol. 52] Q. The western edge?

A. Yes.

Q. Where is Big Stone Gap?

A. It is beyond the eighty miles.

Q. Do you have any rights to serve Big Stone Gap?

A. Yes.

Q. Why?

A. Big Stone Gap is included in the authority west of 29 and east of 60.

Q. Everything west of that can be served?

A. Yes.

Q. From Bristol, Virginia, to Big Stone Gap, do you have any authority to serve that?

A. Yes.

Q. What is the basis of it, going through that way?

Mr. McInerny: I object to that.

Mr. Seibert: I am asking him in regard to a shipment from Bristol to Big Stone Gap. I am asking if he had a shipment from Bristol to Big Stone Gap, and I asked him how he would handle it.

A. If it moved out of Bristol, it would be moving from Bristol to Bluefield by tractor-trailer unit.

Q. Under what authority?

A. Under this authority. Bristol is within the eighty-mile authority.

Q. But that does not say you have to take it to Bluefield for the terminal point and deliver it to another point in the State. You can haul within an eighty-mile radius without connecting with the other eighty-mile certificate. In other words, you take the position that you can haul everything west of 29 and south of 60 in Virginia; is that your position?

A. No. We can haul it in conjunction with the other certificates south of 60 and west of 29.

Q. How about a shipment from Lynchburg to Big Stone Gap? Can you haul that?

A. Yes.

Q. How do you do that?

A. From Lynchburg to Bluefield, West Virginia, and then from Bluefield, West Virginia to Big Stone Gap.

Q. And that is in the two parts of your certificate. You [fol. 53] say you have the right to connect the two certificates together?

Mr. McInerny: May it please the Commission, I don't want to interfere with the interrogation of the witness, but we believe on this certificate that he has the rights on shipment from Lynchburg to Big Stone Gap. Lynchburg is in this area in the third paragraph, within the meets (sic) and bounds of the highway. Let's assume he only has this authority from Bluefield, West Virginia there, on the one hand, and that portion of Virginia west of 29, there would be no question with respect to his authority to transport from Lynchburg to Bluefield, West Virginia. On the second phase of the operation he depends on the second paragraph.

between Bluefield, West Virginia, on the one hand, and, on the other, the points within 75 miles.

Mr. Seibert: That is the point I am making.

Mr. McInerny: If Big Stone Gap is within an air mileage radius of Bluefield, he would be entitled to serve it, but, as it appears from his own drawing, Big Stone Gap would be beyond the 75 miles then——

Mr. Seibert: He is the General Manager, and he said he would haul it. He does not know his own certificate. That is what I am trying to determine, whether he does or not. I asked him if he would handle a shipment from Lynchburg to Big Stone Gap, and he said, "Yes."

By Mr. Seibert:

Q. I think you said that on November first instructions were issued not to haul any more intrastate business, or such business considered as intrastate business; is that right?

A. I still did not restrict him in the area that Mr. Harrison sent me the map marked off.

Q. On the line I spoke of this morning?

A. Yes.

Q. That was November first? Do you know when the Commission's original order in the case became effective?

A. No, not entirely.

Q. You said you were entirely familiar with the Commission's original order in this case, and what was behind the Rule of July ninth. Did you not state that you knew about the order?

A. Yes.

Q. And that it was effective July ninth?

A. Yes.

[fol. 54] Q. Why did you wait until November first to issue the instructions? Did you not know you would be violating the Commission's order?

A. It was agreed by Mr. Harrison as to whether we would be in violation or not.

Q. You just eliminated that line a moment ago that I referred to. Why did you think the Commission's order was issued? Do you know why the order was issued?

A. I imagine I know why.

Q. Why?

A. For us to discontinue the operation was what the Commission desired.

Q. Don't you think it should have had some effect?

A. I still think it did.

Q. When?

A. As I told you, I thought Mr. Harrison and you——

Q. Do you think I have a right to disregard the Commission's order, or Mr. Harrison, either?

A. I am not questioning what right you or Mr. Harrison, either one, have.

Q. Let me ask you another question. A shipment from Clifton Forge to a point like St. Paul, how would that be handled?

A. From Clifton Forge it would move to Bluefield, West Virginia, and then to St. Paul.

Q. It would have to move through Bluefield, West Virginia?

A. That is right.

Q. Could you handle a shipment from Roanoke to St. Paul?

A. No, sir.

Q. Everything from all of this territory beyond the circle line must move first to Bluefield?

A. That is right.

Q. And they are your instructions?

A. Yes.

Commissioner Hooker: I want to ask you a question. You said something about "peddler service." What is "peddler service" as you define it?

A. It is a small truck on which we combine various shipments for a particular route, like where we loaded a truck in Bluefield, West Virginia, to deliver them to Welch and around in that area.

[fol. 55] Q. How far do you send those peddler trucks?

A. It depends on the shipment. They don't go the same route every day, and it depends on what we can load on the straight truck. Sometimes they have gone as much as seventy miles, and sometimes only forty miles, and sometimes only to Bluefield, West Virginia.

Q. Is it the purpose of those peddler trucks to take care of these shipments, these intrastate shipments?

A. The purpose of the peddler truck is to serve both intrastate and interstate movements that move wholly from places in Virginia to another place, or wholly in West Virginia. We have a movement between terminals which we call the "over-the-road movement," and the trucks that deliver to the customers in Bluefield and deliver to the customers down the highway, we call them "peddler runs."

Q. How far do you send that truck? Is it a small truck?

A. It is just a small truck. The beds are fourteen and sixteen feet long and standard width and cannot handle too much freight.

Q. Would you send the peddler trucks from Bluefield, West Virginia to Martinsville, Virginia?

A. Oh, yes, we do that.

Q. And was that the way the shipment went from Chilhowie to Martinsville?

A. Yes, I am reasonably sure that was what happened on that truck. We pick up freight at Chilhowie from points all over, and this truck must have originated at Bluefield and went out to peddle freight to Chilhowie and Saltville. We have daily pick-up service to Chilhowie, and as he went by Chilhowie he picked up a shipment from Martinsville, Virginia, so it was coming back into the terminal on a pick-up.

By Mr. McInerny:

Q. What it did was to come back to the terminal?

A. Yes.

Commissioner Catterall: To Bluefield, West Virginia?

A. Yes.

Commissioner Hooker: You mentioned service from Beckley, West Virginia to Covington, Virginia?

A. Yes.

[fol. 56] Q. How did you go on that?

A. From Covington to Bluefield, West Virginia, and then from Bluefield to Beckley.

Q. How does that route go out of Covington? Does it go to Clinchport?

A. It goes up on 60 west.

Q. West from Covington?

A. Yes.

Commissioner Catterall: You would not carry anything direct from Bluefield, West Virginia to Beckley, West Virginia?

A. Yes.

Q. That originated in Bluefield, West Virginia and terminated in Beckley, West Virginia? Do you transport goods between those two points?

A. We pick it up in Bluefield, West Virginia, and carry it to Beckley.

Q. How do you make that interstate commerce? Do you go from Bluefield, West Virginia back to Bluefield, Virginia and then back to Beckley? You are sure you do transport between the points of Bluefield, West Virginia and Beckley, West Virginia?

A. We haul freight between those points.

Q. Is that on freight originating in Bluefield, West Virginia?

A. No, we do not originate freight in Bluefield, West Virginia, and take it to Beckley.

By Mr. Seibert:

Q. Why don't you do it?

A. In our opinion, we don't have the authority.

Q. But you take it from Bluefield, Virginia to points in Virginia and say you have that authority. What is the difference?

A. By moving it across the State line.

Q. Can't you move this across the State line into Virginia?

A. That would not be the manner in which our certificate operates.

Q. I am trying to find your distinction. What is your distinction?

A. Freight originating in Bluefield, West Virginia going to Beckley would be an intrastate movement.

[fol. 57] Q. What would a shipment be from Bluefield, Virginia, to Tazewell, Virginia?

A. That would be the same.

Mr. McInerny: I desire to object to that, because I believe your question has an improper foundation.

Mr. Seibert: It is not anything of the kind. It is just intrastate traffic. He says from Bluefield, West Virginia to Beckley, West Virginia is intrastate. And from Bluefield, Virginia to Tazewell, Virginia is intrastate.

A. I said, if you move it from Bluefield to Tazewell, it is intrastate, but if you move it back to Bluefield, West Virginia, it is interstate.

Q. And I ask, if you take it from Bluefield, West Virginia, into Bluefield, Virginia, and then take it to Beckley, West Virginia, why isn't that interstate?

Mr. McInerny: May I object to that question? I don't want to object to the questions, because I think it might be informative to the witness, but I think that is not a proper question.

Commissioner Hooker: He has said it was intrastate. If you had a shipment at Richlands going to Tazewell, Virginia how would you carry that?

A. We would carry it from Richlands, Virginia, to Bluefield, West Virginia, and deliver it back to Tazewell.

Q. And you go right through Tazewell going to Bluefield, West Virginia?

A. Yes.

Q. And then you back haul into Tazewell?

A. Yes.

Q. At a distance of forty miles, twenty miles each way?

A. Yes.

Q. Why don't you think that is intrastate movement, when you go right through Tazewell from Richlands in going to Bluefield, West Virginia?

A. In my opinion, our certificate required us to take anything we had to Bluefield.

Q. Had you been told by counsel that if you carried it out [fol. 58] of the State and brought it back, that that would defeat the intrastate part of the law?

Mr. McInerny: I think that is an unfair statement.

Commissioner Hooker: Somebody has told him that, and I would like to find out who.

Mr. McInerny: I would like to make the statement, rather than the witness. I have previously advised him——

Commissioner Hooker: I want him to answer the question. Has anybody advised you that that would be outside of the State's authority?

A. I have certainly been advised that if it was moved in that manner, it was legal.

Redirect examination.

By Mr. McInerny:

Q. With respect to the construction of your certificate, does your company retain counsel and have its affairs, its interstate commerce affairs, submitted to counsel for advice?

A. Yes.

Q. And has someone connected with your Company, particularly Mr. Harrison, consulted counsel with regard to these matters from time to time?

A. Yes.

Mr. Seibert: What is Mr. Harrison's relation to this gentleman?

Mr. McInerny: Mr. Harrison is an officer of the Service Storage & Transfer Company of Staunton, Virginia. That carrier, under authority issued by the Interstate Commerce Commission, acquired all the outstanding stock of Service Storage & Transfer Company about four or five years ago.

Commissioner Hooker: You mean Mr. Smith of Staunton owns the stock of this Company?

Mr. McInerny: Yes, the Smith Transfer Company. It is an investment transfer on their books.

By Mr. McInerny:

Q. With respect to the question Mr. Seibert asked you concerning movements originating in Bluefield, West Vir-

ginia, and destined to Beckley, West Virginia, as I under-
[fol. 59] stand it on your certificate you have here, you only have one authority, one of these paragraphs relates to West Virginia; isn't that correct?

A. Yes.

Q. And that is the second paragraph?

A. Yes.

Q. And you have that part of Virginia and West Virginia within 75 miles of your terminal?

A. Yes.

Q. And you do not, and have not, as a matter of fact, handled any traffic shipped beyond origin and destination intrastate in West Virginia?

A. No.

Q. And the reason for that is that you only have one authority radiating from the Bluefield, West Virginia, terminal, in the State of West Virginia?

A. Yes.

Q. But you do have traffic moving from one authority to your other certificates, because you have overlapping authority in Virginia?

A. Yes.

Q. The second paragraph of your certificate gives you authority from Bluefield, West Virginia, to Virginia?

A. Yes.

Q. And the third paragraph gives it to you to another part of Virginia?

A. Yes.

Q. And they overlap?

A. Yes.

Q. And do you know whether you have been advised that, or Mr. Harrison has been advised, as to what you can do about shipments under this authority?

A. Yes.

Commissioner Hooker: How far is Beckley from Bluefield?

A. Fifty miles.

Q. Does not the certificate give you the authority for 75 miles?

A. Yes.

Mr. McInerny: But the second authority does not. He [fol. 60] can only use that authority once. To the extent they overlap, it can be used twice, but where there is no overlapping, he cannot use it but once; but they have two destinations in the second paragraph and only one state involved in the third paragraph.

Commissioner Hooker: In the second paragraph he can go from points and places within 75 miles of the terminal.

Commissioner Catterall: If he had another certificate that was word for word like that one, then he could say he could combine the two and go beyond and go both ways in the State of Virginia.

Mr. McInerny: If there was another authority, assuming there was an existing one.

Commissioner Catterall: Assuming the one he has now and he gets another one; if he had two, he could go in and back?

Mr. McInerny: Yes.

Commissioner Catterall: Even if those certificates were exactly the same?

Mr. McInerny: Yes. This certificate is a merger of two certificates that were at one time two outstanding certificates, and the predecessor carrier purchased the operation of another carrier. One had the operation one way, and the other had it the other way, and the Interstate Commerce Commission has held that, when that happens, they may be used in conjunction. I desire to brief the point on that.

Mr. Seibert: My feeling is that, as far as the position of the Interstate Commerce Commission is concerned, it has no effect on this Court in Virginia.

Commissioner Hooker: They only pass on interstate matters, and not intrastate matters.

By Mr. McInerny:

Q. One other thing I want to ask you. You indicated your average operating cost was 46 cents per mile. Does that relate to any particular type of equipment or particular operation?

A. That, of course, is the operation of the other than "over-the-road" trucks, the terminal-to-terminal operation.

Q. Is the terminal-to-terminal operation on a different

cost basis than this 46 cents relates to, that is, the peddler run or smaller vehicles?

[fol. 61] A. That is right.

Q. When you relate that 46 cents per mile to traffic, that would not be properly related to one shipment of 200 or 300 pounds?

A. No.

Q. Do you know what your average loading factor is for picking up traffic from Bluefield, West Virginia to Harrisville; are you familiar with that?

A. Equipment in that area runs fairly well loaded. We practically are loaded one way practically every time we go into that area, pretty well loaded. When you go, a lot of times, into these mines, you don't go loaded.

Q. With respect to your operations as a whole, does your company operate at a profit, or has it operated at a profit since you have been with it?

A. It has operated at a profit for the last two years.

Q. During the course of these interstate movements?

A. Yes.

Q. Are there many times when you are offered a single shipment of small size where you do actually run your operation where is (sic) would be conducted at a loss for a single movement? Mr. Seibert gave an example, from Danville to Rocky Mount. If you were required to handle a 500-pound shipment from Danville to Rocky Mount, Virginia through the Bluefield, West Virginia gateway and had no other traffic, would that result in a loss?

A. Certainly.

Q. Do you, as a matter of fact, experience some losses on some traffic, even when going direct?

A. Certainly.

Q. As a general matter, where you have small shipments, are they consolidated with other shipments to make a truckload?

A. That is the purpose of moving it into the terminal, in order to combine shipments and move them at a more profitable operation.

[fol. 62] Re-cross examination.

By Mr. Seibert:

Q. And what is your over-the-road cost?

A. The over-the-road cost is 42 cents.

Q. You said a moment back that you would not handle a shipment from Bluefield, West Virginia to Beckley, West Virginia, because it would be an intrastate shipment, yet you can carry a shipment from Bluefield to Tazewell because it would be an interstate run, according to your statement, between Bluefield and points and places within five miles in Virginia and points and places in West Virginia. What is the difference?

Commissioner Catterall: I am sorry I mentioned it!

A. We don't operate that way.

Commissioner Catterall: Counsel has explained it. He says he has two certificates. That is a hairline distinction. That is the real difference he distinguishes.

Commissioner Hooker: On this shipment from Danville to Rocky Mount, what route would you go on from Danville?

A. What route?

Q. Yes.

A. I don't think we ever have had any shipments to move out of Danville, but, if we did, we would try to handle it over the shortest route.

Q. Going through Martinsville over 220 to Roanoke?

A. We would not go to Roanoke, but to Bluefield.

Q. Isn't that the most direct route to Bluefield, 220 to Martinsville?

A. No, we would take 58 to Harrisville and then to Bluefield.

Q. You go through Martinsville either way. Do you know how close Martinsville is to Rocky Mount?

A. No, sir, I do not.

Q. About twenty miles is the distance.

Witness stood aside.

[fol. 63]

M. E. ROBINETTE, a witness introduced on behalf of Defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. McInerny:

Q. Will you please identify yourself by stating your full name, the name of the company with which you are associated, and the position you hold with that company.

A. M. E. Robinette; Bristol Steel & Iron Works, Bristol, Virginia; Traffic Manager.

Q. How long have you been associated with that Company in that capacity, sir?

A. Six and a half years.

Q. During that time, have you utilized the services of the Service Storage & Transfer Company of Bluefield, West Virginia?

A. Yes.

Q. On traffic moving from Bristol, Virginia to points in West Virginia and other points in Virginia?

A. Yes.

Q. Can you name some of those points in Virginia?

A. Grundy, Wise, and Carbo are the ones I can think of right off, but there are quite a few others.

Q. I hand you Delivery Receipt No. 45670 of Service Storage & Transfer Company indicating a shipment of two steel beams to Quesenberry Construction Company, Wise County Courthouse, at Wise, Virginia. Is that a shipment that moved from your plant to the Quesenberry Construction Company as shown as the destination thereof?

A. This moved out of our warehouse on Bryant Street in Bristol, Virginia.

Q. On the dates shown?

A. I would assume that would be true.

Q. Is that the traffic you have tendered to Service Storage & Transfer Company to that and other Virginia points in the past few years?

A. Yes.

Commissioner Hooker: Where was that going, to Wis Courthouse?

A. Yes.

[fol. 64] By Mr. McInerny:

Q. Are there other points in that general area, in what we call the "Southwest Virginia" area, to which your Company moves traffic via the Service Storage & Transfer Company?

A. Yes.

Q. And that has been done for a number of years?

A. Not for a number of years.

Q. For how long?

A. For 2½ to three years, around three years.

Q. Can you tell me approximately with what frequency you have used the service during that time?

A. I have no basis for frequency. You do not know how often you will get an order, but if you sell a piece of steel today to a man in Wise County, you don't know when you will sell another to that man again.

Commissioner Hooker: What is the name of your business?

A. Bristol Steel & Iron Works.

By Mr. McInerny:

Q. You would designated (sic) your movements as "spasmodic"?

A. Yes.

Q. Do you recall the time when you were advised by representatives of the Service Storage & Transfer Company that the service that they had previously rendered your company on traffic moving from Bristol had to be terminated?

A. That is particularly true of Carbo.

Q. You were so advised?

A. Yes.

Q. Do you recall the approximate date you received that advice?

A. Three weeks ago.

Q. And since that time has your Company utilized the services of Service Storage & Transfer Company, or have any services been rendered by the carrier to other Virginia points?

A. In certain instances they have a few that they pick up.

Q. When you were routing traffic via Service Storage & Transfer Company, were you advised that it was moved under interstate authority and under interstate tariffs?

A. Oh, yes.

Q. And did the traffic move at interstate rates?

A. Yes.

[fol. 65] Q. In addition to your own routing, have any of your consignees requested that the traffic be delivered by Service Storage & Transfer Company?

A. In our motor freight shipment the routing is done by our customers.

Q. And you follow the prescribed routing?

A. Everything else being equal, yes.

Q. Up till recent times, you had no complaints with respect to this type of service which has been rendered for 2½ to three years?

A. We have had no complaints.

Q. Can you describe generally the character of traffic, by size and weight? Would this be a representative shipment, one of relatively small size?

A. This is just the ordinary small-sized shipment. If there is any volume to a movement like this, this is two steel beams, I wish there were more information on it, but I imagine they would only weigh three hundred pounds, and that would be less than three feet long and not more than six inches thick, and if there were any volume at all, we would take it on our own trucks.

Commissioner Hooker: Is is (sic) just a short distance over there?

A. Yes.

Q. How far is it?

A. I have never been over there to Wise.

Q. I understood you to say it was a short distance.

A. Maybe there would be some other person that could answer that better than I could.

Q. You are doing the testifying. What do you understand "interstate authority" to mean?

A. My understanding of "interstate authority"?

Q. Yes, "interstate authority."

A. It is authority granted by the Interstate Commerce

Commission for the privilege of handling freight between states, under certain restrictions as given in the orders.

Q. That is a very good description.

Witness stood aside.

[fol. 66]

E. R. GRESHAM, JR. a witness introduced on behalf of Defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. McInerny:

Q. Will you please identify yourself by stating your full name, the name of the company with which you are associated, and the scope of your duties.

A. E. R. Gresham, Jr.; Parts Manager, Rish Equipment Company, Roanoke, Virginia.

Q. How long have you been associated with that Company?

A. At the time I went with the Company, it was Roanoke Truck & Engine Company. It was then changed to Rish Equipment Company, and as of March of this year it will be seventeen years.

Q. And what familiarity do you have with the traffic and transportation work of your Company? Do you have any connection with the carriers that perform transportation work for your Company?

A. Yes, I do.

Q. Are you familiar with the service performed by Service Storage & Transfer Company for your organization?

A. Yes.

Q. Have you utilized those services between your location at Roanoke to points they are authorized to serve in West Virginia?

A. I have.

Q. Have you also used their services to points they are authorized to serve in Southwest Virginia?

A. I have.

Q. For how long a period, to your knowledge, have those services been rendered for the account of your Company?

A. I could go several years back, some ten or twelve years.

Q. I ask you to look at Freight Bill No. 3253 of Service Storage & Transfer Company. Is that the type of traffic they have handled for your Company, the Service Storage & Transfer Company?

A. Yes, sir.

Q. When you route this traffic via Service Storage & Transfer Company, is it your intention that the traffic move [fol. 67] through Bluefield, West Virginia, as it must do under their authority?

A. If it is so requested by the customers, that they receive a shipment that they are urgently in need of, and they request that it be handled that way even though it is at a higher rate, as they are in need of it. If they want to be certain that they will get the shipment in time, and they order the shipment and receive the shipment with satisfactory service.

Q. This indicates that this particular shipment weighed 2480 pounds. Does your Company at any time have the necessity for a single movement of freight, several shipments in one vehicle destined to Southwest Virginia?

A. Recently, small shipments of that nature, we have not. The bulk of that is being handled through Bluefield, West Virginia.

Q. You have a distribution warehouse there?

A. Yes.

Q. Do you distribute any traffic from Roanoke to Southwest Virginia at this time?

A. The only thing would be in large quantities.

Q. Do you have any traffic from Roanoke to Bluefield, West Virginia?

A. Quite a bit.

Q. And on that traffic, do you utilize the service of Service Storage & Transfer Company?

A. Yes.

Q. Do you combine those shipments with other shipments moving down to Southwest Virginia?

A. If and when we have that type of business, but not generally.

Q. Can you indicate the size and weight of shipments that your Company tenders to the Service Storage & Transfer Company, giving the smallest size to the maximum?

A. It would range from anything over 100 pounds, and anything under that is handled generally now by way of a bus. Anything over 100 pounds on up to 700, 800, 1,000, or 10,000 pounds, whatever can be handled by them.

Q. Did anyone from Service Storage & Transfer Company recently inform you that they would be unable to handle some of your traffic from Roanoke, Virginia to other points in Virginia because of the pendency of this proceeding?

A. No.

[fol. 68] Q. Do you know whether any traffic of this type has moved from Roanoke to Glen Lyn, Virginia since November first for the account of your Company?

A. That is the only thing I know of.

Q. And this moved in August?

A. Yes.

Q. As far as you know, no traffic has moved to Southwest Virginia since November first?

A. That is correct.

Witness stood aside.

Commissioner Hooker: Have you any other testimony?

Mr. McInerny: No.

Commissioner Hooker: The Commission will take this matter under advisement.

Mr. McInerny: May counsel be permitted to submit a Brief as to its position?

Note: After conferring with Reporter as to time of delivery of transcript, which was promised by January 15, 1957, Commissioner Hooker informed Mr. McInerny that he could file his Brief within twenty days after receipt of the record, but stated that his Company would have to comply with the Commission's order.

Mr. McInerny: This is not an attempt to delay the matter, but we do desire to file the Brief, and we assure you that it is in good faith.

Commissioner Hooker: You have made a very poor effort at showing good faith, I can tell you that. As far as

I am concerned, it is over, unless your client is going to comply with the order of the Commission until we decide this case.

Mr. McInerny: I thought there might be some middle ground which we could agree to.

Commissioner Hooker: Are you going to file the Brief, or not? If you are, then your client must comply with the order of the Commission.

Chairman King: You may file the Brief twenty days after receipt of the record, but in the meantime, you have to comply with the Commission's order, and if you do not, that would be a violation of the Commission's Rule and order, and that would not be any question of interstate or intrastate traffic.

[fol. 69]

BEFORE THE STATE CORPORATION COMMISSION

Case No. 13182.

COMMONWEALTH OF VIRGINIA, at the relation of the STATE CORPORATION COMMISSION,

v.

SERVICE STORAGE & TRANSFER COMPANY, INCORPORATED.

JUDGMENT—February 26, 1957

On November 29, 1956, came on for hearing the rule issued against Service Storage & Transfer Company, Incorporated, for specified violations of Chapter 12, Title 56 of the Code of Virginia in transporting property for hire between points in Virginia in intrastate commerce without authority of the State Corporation Commission, Commissioners Hooker, King and Catterall sitting.

Francis W. McInerny and O. L. Shewmake appeared for the defendant. William C. Seibert appeared for the Commission.

The testimony shows and the defendant admits the transportation of property for compensation between the points in Virginia set forth in the rule.

From the following Virginia points of origin to the destinations shown, the only normal, regular or usual route is intrastate:

Origin	*Destination*
Bluefield, Virginia	Haysi, Virginia
Roanoke, Virginia	Glen Lyn, Virginia
Lynchburg, Virginia	Draper, Virginia
Roanoke, Virginia	Wytheville, Virginia
Bristol, Virginia	Carbo, Virginia
Bristol, Virginia	Cranes Nest, Virginia
Bristol, Virginia	Wise, Virginia
Lynchburg, Virginia	Marion, Virginia
Roanoke, Virginia	Kimbleton, Virginia
Roanoke, Virginia	Abingdon, Virginia

[fol. 70] and the Commission finds that the transportation of goods from the above named origin points to the above named destination points in the State of Virginia is in violation of Chapter 12, Title 56 of the Code of Virginia; and it appearing that by order in Case No. 13074 the defendant was fined $25.00 for the transportation of property intrastate over the same or similar routes, it is

Adjudged, Ordered and Decreed, That the defendant be fined $500.00 for each of the said violations, making a total of $5,000.00, together with the costs of this proceeding; and that a writ of *fieri facias* do issue in favor of the Commonwealth of Virginia against the defendant.

A True Copy.

Teste:

N. W. Atkinson, Clerk of the State Corporation Commission.

BEFORE THE STATE CORPORATION COMMISSION

March 21, 1957.

Case No. 13182.

COMMONWEALTH OF VIRGINIA, at the relation of the STATE CORPORATION COMMISSION,

v.

SERVICE STORAGE & TRANSFER COMPANY, INCORPORATED.

OPINION—March 21, 1957

Opinion, Catterall, Chairman:

This case is a prosecution of the defendant for operating as a common carrier by motor vehicle in intrastate commerce on the highways of Virginia without a certificate of public convenience and necessity in violation of §56-278 of the Code of Virginia. The defendant holds certificates of [fol. 71] public convenience and necessity issued by the Interstate Commerce Commission, but none from this Commission. There is no dispute as to the facts. The legal problem is where to draw the line between interstate and intrastate commerce. The defendant's I. C. C. certificates, of course, expressly limit the defendant's operations to interstate commerce. Notwithstanding the generality of the language in those certificates describing the geographical boundaries in which defendant may operate, the certificates contain a limiting clause to the effect that the holder of the certificate is granted authority:

"* * * to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle * * *"

Our inspectors discovered that the defendant was holding itself out as a common carrier to transport and was transporting property for compensation between numerous point (sic) in Virginia. Accordingly a rule was issued under §56-304.12 of the Code, which provides:

"The Commission may, by judgment entered after a hearing * * * if it be proved that the defendant * * * has violated any law of this State regulating the operation of motor vehicles for compensation on the highways of this State * * * impose a penalty, not exceeding one thousand dollars, which shall be collectible by the process of the Commission as provided by law."

Pursuant to the applicable provisions of the State Constitution the Commission, in cases of this kind, sits judicially as a court of record. The Commission fined the defendant $500 for each of ten specified violations of the law, making a total of $5,000 and costs; and issued a writ of *fieri facias*. Execution of the writ will be held in abeyance so long as defendant's petition for a writ of *supersedeas* is pending in the Supreme Court of Appeals.

The large size of the fine (one-half the maximum provided by law) is because in a prior case involving the same defendant, the same course of conduct and the same law, the Commission fined the defendant $25 for the purpose of settling the law of the case. The defendant paid the fine, did not take an appeal, and continued to operate in the same manner as before. Since $25 is all it costs to get a certificate of public convenience and necessity, it is manifest [fol. 72] that the fine will have to be adjusted upward until it has a deterrent effect.

The prior case was Case No. 13074. It was heard on June 28, 1956, and final judgment was entered on July 9, 1956. Our decision in that case is *res judicata* in this case. Pursuant to the authority conferred on it by §155 of the Constitution, the Commission has adopted the following rule:

"15. *Res Judicata.* The doctrine of *res judicata* applies to final judgments, orders and decrees entered by the Commission sitting as a court of record. It does not apply in cases in which the Commission has a duty of continuous supervision or in any case in which a matter is reserved for further consideration."

The final order in that case is as follows:

"COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

City of Richmond, July 9, 1956.

Case No. 13074.

COMMONWEALTH OF VIRGINIA, at the relation of the STATE CORPORATION COMMISSION,

v.

SERVICE STORAGE & TRANSFER COMPANY, INCORPORATED.

On June 28, 1956, came on for hearing the rule awarded against Service Storage & Transfer Company, Incorporated, alleging the transportation of property in intrastate commerce without authority of the State Corporation Commission, Commissioners Hooker, King and Catterall sitting.

[fol. 73] Francis W. McInerny appeared as counsel for the defendant. William C. Seibert appeared for the Commission.

It appearing to the Commission that from the evidence submitted the defendant did, as alleged in the rule of the Commission of June 11, 1956, transport property in intrastate commerce without the authority of the State Corporation Commission in violation of Chapter 12, Title 56 of the Code of Virginia, a fine of $25.00 and costs of the proceeding shall be assessed against the said defendant.

IT IS, THEREFORE, ORDERED:

(1) That Service Storage & Transfer Company, Incorporated, be, and it is hereby, fined the sum of $25.00 and costs of the proceeding.

(2) A copy of this order shall be sent to Francis W. McInerny, counsel for the defendant."

The Commission delivered the following opinion in that case:

"COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

July 9, 1956.

Case No. 13074.

COMMONWEALTH OF VIRGINIA, at the relation of the STATE CORPORATION COMMISSION

v.

SERVICE STORAGE & TRANSFER COMPANY, INCORPORATED

Opinion, Catterall, Commissioner:

This is a rule to show cause why the defendant should not be punished for operating intrastate in Virginia as a common carrier of property without a certificate of convenience and necessity from this Commission.

[fol. 74] The defendant admits the facts alleged in the rule. Its defense is that it can lawfully transport goods between Virginia points so long as it carries them out of the state and back again. It asserts, for example, the right to carry goods from Roanoke to Wytheville (which is 80 miles down Route 11), so long as it hauls them 160 miles around by Bluefield, Va.

Its federal certificate authorizes the defendant to engage in *interstate* commerce within 75 miles of Bluefield: the certificate specifies territory and not routes. If an I. C. C. certificate can and does grant the authority claimed by the defendant, the state commissions might as well go out of business.

The defendant relies on Atlantic Freight Lines, Inc., 51 M. C. C. 175 (1949) in which Division 5 of the Interstate Commerce Commission ruled that a movement from Pittsburgh to Philadelphia was interstate commerce if the movement goes by way of Baltimore.

Now there can be no doubt that a movement from a point in a state to another point in the same state is *sometimes* interstate commerce. The interesting question is whether the interstate character of the movement turns on whether

it *is* an interstate movement or whether the I. C. C. *says* it is an interstate movement. Division 5 favors the latter view. In *Eichholz* v. *Missouri P. S. C.*, 306 U. S. 268, the Supreme Court upheld the authority of a state commission. Division 5 explained that the Supreme Court was able to render that decision only because Division 5 had not spoken. It said (p. 190):

'Thus, the situation presented in that case is dissimilar in a very material respect from that here present. There the State acted while the carrier's application for authority was still pending before us and before we had decided the matter and assumed jurisdiction over the interstate movement. Here the application has been finally adjudicated and we have assumed jurisdiction. Accordingly, the *Eichholz* case is not authority for the proposition that the issue can be reopened and reviewed collaterally after we have finally determined the character of commerce to be interstate, have assumed jurisdiction, and have issued the certificate.'

If that declaration of the Interstate Commerce Commission is taken at its face value, that Commission could law-[fol. 75] fully make a binding adjudication that transportation between Richmond and Petersburg was interstate. Of course that declaration is to be read in its context, and the I. C. C. would presumably admit that it could not, by its mere say so, transmute intra into interstate commerce.

When the actual physical movement of the vehicle crosses the state line and back again the question of whether it thereby escapes state regulation depends on whether the movement was '*bona fide.*' Whether the movement was *bona fide* cannot be permitted to depend on the carrier's state of mind. The test must be whether an ordinarily prudent carrier not restrained by regulation would use that route. The defendant drives 160 miles from Roanoke to Wytheville not because that is a sensible way to go but because it crosses the line into West Virginia. No *unregulated* carrier would do such a thing. Our conclusion is that when a carrier follows a circuitous route for the purpose of escaping state regulation he does not escape it. And we judge his purpose not by what he says his purpose is, but by what it appears to be from looking at a highway map.

In *Eichholz* v. *Public Service Commission*, 306 U. S. 268, 83 L. ed. 641 (1939) the carrier hauled freight from St. Louis, Missouri, to Kansas City, Missouri, through his terminal in Kansas City, Kansas, which was located less than half a mile from the Missouri line. In holding that the state commission had jurisdiction, the court said (p. 274):

"Appellant insists that the hauling from St. Louis over the state line to Kansas City, Kansas, of merchandise consigned to persons in Kansas City, Missouri, and hauling it back again to its intended destination in Kansas City, Missouri, was actually interstate transportation * * * That fact, however, does not require the conclusion that the State's action for the protection of its intrastate commerce was invalid * * * We may assume that Congress could regulate interstate transportation of the sort here in question, whatever the motive of those engaging in it. But in the absence of the exercise of federal authority, and in the light of local exigencies, the State is free to act in order to protect its legitimate interests even though interstate commerce is directly affected * * * If appellant's hauling of the merchandise in question across the state line was not in good faith but was a mere subterfuge to evade the State's requirement as to intrastate commerce, there is no ground [fol. 76] for saying that the prohibition of the use of the interstate permit to cover such transactions, and the application of the Commission's rule prohibiting them in the absence of an intrastate certificate, was an unwarrantable intrusion into the federal field or the subjection of interstate commerce to any unlawful restraint * * * *".

In *Central Greyhound Lines* v. *Mealey*, 334 U. S. 653, 92 L. ed. 1633 (1948), a carrier of passengers between termini in New York transported them over a route 42% of which was in other states. New York imposed a gross receipts tax on the total operation, and the New York Court of Appeals held that 'This is not interstate commerce.' The Supreme Court held that only 58% of the gross receipts could be taxed in New York. The court's opinion intimates that the *Eichholz* test is still valid, saying (p. 660):

"There is no suggestion here that the interstate routes were utilized as a means of avoiding even in part New York's taxation. Compare, e.g., *Eichholz* v. *Public Serv.*

Commission, 306 U. S. 268, 83 L. ed. 641, 59 S. Ct. 532, and *Ryan* v. *Pennsylvania Pub. Utility Commission*, 143 Pa. Super. 517, 17 A 2d 637. We are not dealing with a necessary deviation or a calculated detour."

The Motor Carrier Act of 1935 provides that a carrier seeking a grandfather certificate must prove that he 'was in *bona fide* operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made * * *' Thus the statute compels the courts to give meaning to the elusive phrase *'bona fide.'* In *Eastern Carrier Corporation* v. *United States*, 31 F. Supp. 232 (1939) the applicant, prior to 1935, transported property between termini in Pennsylvania. First it ran through Hackettstown, about 25 miles over in New Jersey, and then established a terminal at Bridgeville, New Jersey, about five miles from the border. The Interstate Commerce Commission decided that this was not *bona fide* interstate commerce. saying:

"The fact that a terminal has now been erected at Bridgeville and the routes have been shortened by using that as a transfer point instead of Hackettstown does not give the [fol. 77] color of genuineness to operations which, from their very inception, were fraudulent.'

The three-judge federal court agreed with the Commission, saying (p. 237):

"The Eichholz case appears to be nearly the converse of that at bar. The Supreme Court, by the Chief Justice, stated (306 U. S. at page 274, 59 S. Ct. at page 535, 83 L. Ed. 641): 'If appellant's hauling of the merchandise in question across the state line was not in good faith but was a mere subterfuge to evade the State's requirement as to intrastate commerce, there is no ground for saying that the prohibition of the use of the interstate permit to cover such transactions, and the application of the Commission's rule prohibiting them in the absence of an intrastate certificate, was an unwarrantable intrusion into the federal field or the subjection of interstate commerce to any unlawful restraint.' The language employed by the Supreme Court in the cited case, we think, casts illumination upon

the common sense interpretation which must be given to the phrase *'bona fide* operation' employed in the grandfather clause of the Motor Carrier Act."

Dohrn Transfer Co. v. *Hoegh,* 116 F. Supp. 177 (1953) was a suit before a three-judge court to enjoin state officials from enforcing Section 325.6 of the Code of Iowa as amended in 1953. The 1953 amendment provided:

"It is hereby declared unlawful for any motor carrier to transport over a regular route or between fixed termini any person or property, for compensation, from any point or place in the state of Iowa to another point or place in said state irrespective of the route, highway or highways traversed, *including the crossing of any state line of the state of Iowa,* or the ticket or bill of lading issued and used for such transportation, without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation." (Italics added.)

This statute is right in the teeth of 49 U. S. C. A. §303 (10) which provides:

"The term 'interstate commerce' means commerce between any place in a State and any place in another State *or between places in the same State through another State,* [fol. 78] whether such commerce moves wholly by motor vehicle or partly by motor vehicle and partly by rail, express, or water." (Italics added.)

The court refused to hold Section 325.6 void on its face, for the reason that it could be enforced to the extent permitted by the *Eichholz* test without conflicting with the federal statute. The court said (p. 189):

"In situations such as those disclosed in the case of *Eichholz* v. *Public Service Commission of Missouri,* 1939, 306 U. S. 268, 59 S. Ct. 532, 83 L. Ed. 641, the commerce clause would not be an impediment to the enforcement of the provisions of Section 325.6 as amended or to its applicability.

"It is not deemed necessary in the present case to make a declaration as to the constitutionality of Section 325.6 as amended. The plaintiff will be afforded adequate relief by treating the provisions of that Section as not applicable

to the plaintiff and enjoining the members of the Iowa Commerce Commission accordingly."

The court took a realistic and common sense view of both statutes. It did not take either the federal statute or the state statute literally. It construed boh (sic) of them in conformity with the rule laid down by the Supreme Court in *Eichholz,* namely, that a movement over a state line is subject to state jurisdiction if the movement is abnormal. The essence of the *Eichholz* rule is contained in the Supreme Court's quotation (at p. 271) of the District Court's finding that the carrier's route was not

'the normal, regular or usual route.'

There can seldom be doubt whether a route is normal, regular or usual.

In the *Dohrn Transfer Co.* case the routes followed by the carrier through Illinois between towns in Iowa were normal, regular and usual because bends in the Mississippi river made it normal, etc., to cross the river over and back. To illustrate this point the court gives a table of miles on page 180 of its opinion showing that the routes through Illinois were either the same as, shorter than or not more than three miles longer than the intrastate routes in Iowa.

We have no doubt that the shipments set forth in the rule to show cause were subject to regulation by Virginia within the rule laid down in the *Eichholz* case. That rule clearly [fol. 79] does not authorize the defendant to carry a parcel across the state line and then bring it back into Virginia over the same route. It would not be normal, regular or usual to transport goods from Roanoke to Bluefield, W. Va., and back to Salem or back to Pearisburg.

King, *Chairman* and Hooker, *Commissioner,* concur."

In applying the *Eichholz* rule there might be some situations in which reasonable men might differ as to whether a given route is "the normal, regular or usual route." Because of that possibility the following letters were exchanged between counsel for the carrier and commerce counsel:

"Washington 6. D. C.

July 12, 1956.

William C. Seibert, Esquire
Commerce Counsel
State Corporation Commission
Commonwealth of Virginia
Richmond, Virginia

"Dear Mr. Seibert:

"Yesterday I received from the Virginia State Corporation Commission its order holding that the operations complained of in case No. 13074 Commonwealth of Virginia *v.* Service Storage and Transfer Company, Inc., constitute operations in intrastate commerce in violation of certain provisions of the code of Virginia. I am reporting the results of this proceeding to officials of the company with recommendations and I expect to be advised on the company's intentions in respect to appeal or other action by July 20, 1956. In the circumstances, may I request that the effectiveness of the commission's order be delayed until August 1, 1956, so that the company may make determinations as to what future action, if any, should be taken.

"I desire to re-emphasize that it is the company's intention to comply with both the law of Virginia and the requirements of the Interstate Commerce Commission and the certificate which the carrier holds. As we advised your Commission during the course of the hearing on this matter, the [fol. 80] carrier is anxious to be informed with some degree of certainty as to what it may or may not do in transporting shipments between Virginia points through the gateway of Bluefield, West Virginia. The opinion of the Commission itself recognizes (Page 2, second paragraph) that 'transportation from points in a state to another point in the same state is *sometimes* interstate commerce.' The carrier's position on the matter is that it is entitled to know what standards or guides are to be used in determining when a particular movement constitutes interstate commerce and when it does not. In an effort to avoid protracted litigation on the question, we respectfully request your office to advise us informally as to what its judgment is on the matter. For as you can understand in the absence of an

authoritative guide or standard, the carrier would continue to subject itself to prosecutions and fines on the acceptance and transportation of any shipment moving from one Virginia point to another. The carrier and its officials are fully aware that the problem is one that has a 'twilight zone' and presents difficulty for your enforcement staff. It believes, however, that the continued attitude of cooperation between the carrier and your office may result in an appropriate solution to the problem.

Very truly yours,

FRANCIS W. McINERNY."

"COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

Richmond

July 13, 1956.

Francis W. McInerny, Esquire
1625 K Street, N. W.
Washington 6, D. C.

Dear Mr. McInerny:

"I have your letter of July 12, regarding the decision of this Commission in Case No. 13074 in which a fine of $25.00 and costs was assessed against the Service Storage & Transfer Company, Incorporated.

"A reasonable time is given for the payment of fines assessed by the Commission. We shall expect this fine to be paid in that time.

[fol. 81] "Concerning the statement in your letter that the carrier is entitled to know what standards or guides are to be used in determining when a particular movement constitutes interstate commerce and when it does not, I will advise you that it appears to me you have a choice of two courses. Under the Rules of Practice and Procedure of this Commission, and I am enclosing a pamphlet containing these rules, you may ask for a declaratory judgment. This is referred to under Rule 13 as shown in the pamphlet at-

tached. The alternative it appears to me, is to reach an agreement as to what might be considered interstate movement and what might be considered intrastate movement on shipments in the territory served by the Service Storage and Transfer Company, Incorporated. I believe, as I stated to you before, that we could reach some sort of an agreement as to what points we would consider as properly interstate and unless we received a complaint with respect to the movement we would allow our investigators to observe the same understanding. This agreement might be reached after a conference between us.

"I am sure you understand that it is our desire to cooperate with you and your client at all times. We are here to assist as well as to regulate.

Very truly yours,

WILLIAM C. SEIBERT
Commerce Counsel."

Thereafter our inspectors on the highways reported that the defendant had not changed its method of doing business; and the rule in the present case was issued. The rule came on for hearing on November 29, 1956, and the evidence and argument followed the same pattern as in the prior case. Counsel for the defendant asked leave to file a brief and leave was granted on the assumption that the defendant would abide by the law laid down in the prior case in the meantime.

The final judgment in this case was entered on February 26, 1957. The judgment describes ten routes that the carrier has served in intrastate commerce and fines the defendant $500 for each of ten violations.

[fol. 82] Counsel for the defendant makes the point that the interstate Commerce Commission has jurisdiction to interpret the meaning of its own certificates. We do not find in the record evidence that that Commission has interpreted the defendant's certificate to mean that it is authorized to do what we have punished it for doing. There are of course limits on the authority of a federal commission to interpret certificates issued by it. It could not, under

the guise of interpretation, enlarge the authority delegated to it by Congress or the power delegated to Congress by the Constitution.

Because of our federal form of government the present case is of great importance to the states. If the contentions so earnestly advanced by counsel for defendant are correct, it would follow that a carrier holding a federal certificate of convenience and necessity to operate over Route 1 between Baltimore and Richmond could do the following things: (1) It could pick up freight in Alexandria, take it to Washington and bring it to Richmond. (2) It could pick up freight in Richmond, take it to Washington and bring it back to Ashland.

If the defendant is right in saying that its certificates *permit* it to haul by circuitous routes between Virginia cities, it necessarily follows that its certificates *compel* it to perform those circuitous movements. A common carrier *must* render all the services that its certificate *authorizes* it to render.

In issuing certificates of convenience and necessity the regulatory bodies are required by the governing laws to issue no more certificates than are necessary to serve the public. State certificates cannot authorize a carrier to cross the state line. If federal certificates can authorize the movement of goods from Richmond to Ashland or Richmond to Petersburg the state regulatory pattern will be destroyed and the beneficent purposes of the state laws cannot be accomplished. Our conclusions are (1) The Constitution does not authorize Congress to regulate the transportation of a parcel consigned from Roanoke to Salem; (2) Congress has not authorized the I.C.C. to regulate the transportation of a parcel consigned from Roanoke to Salem; (3) the I.C.C. has not authorized the defendant to transport a parcel consigned from Roanoke to Salem. The defendant may transport freight from one Virginia city to another only when a normal, regular or usual route between the cities crosses the state line.

Hooker, Commissioner, concurs.

[fol. 83]

BEFORE THE STATE CORPORATION COMMISSION

[Title omitted]

ORDER RE ORIGINAL EXHIBITS—March 21, 1957

Service Storage & Transfer Company, Incorporated, by Jno. C. Goddin, of Counsel, having filed due notice of appeal in this case,

It Is Ordered that all of the original exhibits filed with the evidence, numbered and described as follows, be certified and forwarded to the Clerk of the Supreme Court of Appeals of Virginia, to be returned by the Clerk thereof to this Commission with the mandate of that Court:

Exhibit No.	*Description*
1.	Map of Virginia.
2.	Certificates of Public Convenience and Necessity, ICC, No. MC 30471, July 27, 1943, and No. MC 30471 SUB 1, July 6, 1950.
3.	Map, Delaware, Maryland, Virginia and West Virginia.
4.	Service Storage & Transfer Co., Inc. Operation, Nov. 28, 1956.
5.	Mileage between points in Virginia and West Virginia.
6.	Mileage between points in Virginia.
7.	Comparison of revenue, tonnage and shipments between two points in Virginia and of all shipments, week beginning June 18, 1956.
8.	Same as 7, week beginning Aug. 13, 1956.
9.	Roanoke outbound routing guide.

[fol. 84]

10.	Bristol outbound routing guide.
11.	Shipping Documents.

END

A True Copy.

Teste:

N. W. Atkinson, Clerk of the State Corporation Commission.

ACTING CHAIRMAN'S CERTIFICATE TO RECORD AND EXHIBITS (omitted in printing)

[fol. 85]

CLERK'S CERTIFICATE RE NOTICE OF APPEAL—March 22, 1957

I, N. W. Atkinson, Clerk of the State Corporation Commission, certify that within sixty days after the final order in this case Service Storage & Transfer Company, Incorporated, by Jno. C. Goddin, of Counsel, State-Planters Bank Building, Richmond 19, Virginia, filed with me a notice of appeal therein which had been delivered to Counsel for the State Corporation Commission and to the Attorney General of Virginia, there being no opposing counsel, pursuant to the provisions of Section 13 of Rule 5:1 of the Rules of Supreme Court of Appeals of Virginia.

Subscribed at Richmond, Virginia, March 22, 1957.

N. W. Atkinson, Clerk.

[fol. 89]

IN THE SUPREME COURT OF APPEALS OF VIRGINIA

Record No. 4748

SERVICE STORAGE AND TRANSFER COMPANY, INCORPORATED, Appellant,

against

COMMONWEALTH OF VIRGINIA, Appellee.

Upon an appeal of right from an order entered by the State Corporation Commission on the 26th day of February, 1957.

JUDGMENT—March 10, 1958

This day came again the parties, by counsel, and the court having maturely considered the transcript of the record of the order aforesaid and arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that there is error in part in the order appealed from. It is therefore adjudged and ordered that the said order be, and the same is hereby affirmed, except

in so far as the said order assesses fines for the transportation of goods originating in Roanoke, Lynchburg and Roanoke, Virginia, with respective destinations being Kimballton (Kimbleton), Marion and Abingdon, Virginia, and the cause is remanded to the said Corporation Commission with direction to amend its order with respect to the aforesaid three shipments in accordance with the views expressed in the said written opinion of this Court.

Which is ordered to be certified to the said Corporation Commission.

A Copy,

Teste: /s/ H. G. Turner, Clerk.

[fol. 90]

IN THE SUPREME COURT OF APPEALS OF VIRGINIA

Record No. 4748

SERVICE STORAGE AND TRANSFER COMPANY, INC.,

v.

COMMONWEALTH OF VIRGINIA.

OPINION BY JUSTICE KENNON C. WHITTLE—March 10, 1958

FROM THE STATE CORPORATION COMMISSION OF VIRGINIA

This is an appeal of right from an order of the State Corporation Commission wherein Service Storage and Transfer Company, Inc. (hereinafter called Service) was fined $500 for each of ten alleged violations of Chapter 12, Title 56, Code of Virginia, 1950, the aggregate of the fines being $5,000.

The case grows out of a prosecution of Service under § 56-304.12 of the Code for allegedly operating as a common carrier in intrastate commerce on the highways of Virginia without a certificate of convenience and necessity in violation of § 56-278.

Service is a common carrier by motor vehicle, operating under authority of Certificate No. MC-30471, issued by the Interstate Commerce Commission. The territory covered in the certificate follows:

"Between Bluefield, Va., Bluefield, W. Va. and points and places within five miles of Bluefield, W. Va.

[fol. 91] [1] "Between Bluefield, Va., and points and places within five miles of Bluefield, Va., and those within five miles of Bluefield, W. Va., respectively, on the one hand, and, on the other, points and places in that part of Virginia and West Virginia within 75 miles of that territory.

[2] "Between Bluefield, W. Va., on the one hand, and, on the other, points and places in West Virginia, that part of Virginia west of U. S. Highway 29 and south of U. S. Highway 60 including points and places on the indicated portions of the highways specified, and that part of Virginia north of U. S. Highway 60 which is within 80 miles of Bluefield, W. Va."

The manifest object of the Interstate Commerce Comission's certificate was to permit Service to engage in interstate commerce. This is the extent of the commission's jurisdiction. Under the ICC certificate Service was empowered, (1) to gather freight within the defined territory and transport it out of Virginia into other jurisdictions; and (2) to gather freight within the defined territory, haul it out of the State and thence back to points within the defined territory, provided it acted in good faith and did not route the freight out of Virginia for the purpose of evading Virginia's jurisdiction. We are here concerned with the latter right.

It is contended by the Commonwealth that Service operates between points in Virginia by way of Bluefield, West Virginia; that the routes employed are not the usual or normal routes but are circuitous routes used for the purpose of evading the Virginia law; that Service was fined on July 9, 1956 for similar violations from which no appeal was taken; that since the imposition of that fine Service has continued to violate the rule issued by the

State Corporation Commission, resulting in the issuance of the present rule which is the basis for the fines involved on this appeal.

[fol. 92] A fine of $500 was imposed upon Service for goods shipped by alleged circuitous routes in each of the following instances:

Origin	*Destination*
Roanoke, Virginia	Glen Lyn, Virginia
Lynchburg, Virginia	Draper, Virginia
Roanoke, Virginia	Wytheville, Virginia
Bristol, Virginia	Carbo, Virginia
Bluefield, Virginia	Haysi, Virginia
Bristol, Virginia	Wise, Virginia
Roanoke, Virginia	Kimbleton [Kimballton), Va.
Bristol, Virginia	Cranes Nest, Virginia
Lynchburg, Virginia	Marion, Virginia
Roanoke, Virginia	Abingdon, Virginia

It was stipulated that each shipment went through Bluefield, West Virginia.

The Commonwealth established by uncontradicted evidence that Service did not follow the usual or normal route between the points involved. It was urged that the goods in question had been shipped by Service over unnecessarily long and circuitous routes for the sole reason that it did not hold a certificate of convenience and necessity from the State Corporation Commission of Virginia.

The several charges against Service were developed by the Commonwealth as follows:

[fol. 93] On August 21, 1956, an investigator of the Division of Motor Transportation of the State Corporation Commission stopped a truck owned by Service on Route 460, one mile north of Pearisburg, Virginia, on which was found a shipment from Rish Equipment Company, Roanoke, Virginia, to the Heron Todd Steel Construction Company, Inc., Glen Lyn, Virginia. This shipment had moved from Roanoke to Bluefield, West Virginia, and thence back to Glen Lyn, whereas the usual or normal route would have been direct from Roanoke to Glen Lyn, entirely within the State.

On August 22, 1956, an investigator stopped a truck owned by Service on Route 460, one mile north of Pearisburg, Virginia, where he found a shipment from Norfolk and Western Industries, Inc., Lynchburg, Virginia, to Sutphin and Jackson, Draper, Virginia. This shipment had moved from Lynchburg to Bluefield, West Virginia, and thence back to Draper, when the usual or normal route would have been from Lynchburg to Draper, wholly within the State.

On September 6, 1956, an investigator stopped a truck owned by Service on Route 460, one mile north of Pearisburg, Virginia, wherein he found a shipment from Leonard Electronics, Roanoke, Virginia, to Wytheville Vance Com- [fol. 94] pany, Wytheville, Virginia. This shipment moved from Roanoke through Bluefield, West Virginia, and thence back to Wytheville. The usual or normal route for this shipment would have been from Roanoke to Wytheville, wholly within the State.

On September 11, 1956, an investigator stopped a truck owned by Service on Route 58 near St. Paul, Virginia, on which he found a shipment from Bristol Steel and Iron Works, Bristol, Virginia, to Link Belt Company, Carbo, Virginia. This shipment moved from Bristol to Bluefield, West Virginia, and thence back to Carbo, when the usual or normal route would have been from Bristol to Carbo, wholly within the State.

On September 11, 1956, a truck owned by Service was stopped by an investigator on Highway 58, near St. Paul, Virginia. The truck contained a shipment from F. D. Lazenby and Company, Bluefield, Virginia, to Haysi Hardware Company, Haysi, Virginia. This shipment went from Bluefield, Virginia, to Bluefield, West Virginia, and thence back to Haysi, and did not take the usual or normal route which lies wholly within the State.

On September 13, 1956, another shipment was involved from Bristol Steel and Iron Works, Bristol, Virginia, to Quesenberry Construction Company, Wise, Virginia. This [fol. 95] shipment moved from Bristol to Bluefield, West Virginia, thence back to Wise, when the usual or normal route would have been from Bristol to Wise, wholly within the State.

On September 17, 1956, an investigator stopped a truck owned by Service at the junction of U. S. Highways 58 and 72, at Coeburn, Virginia, on which he found a shipment of iron railway car wheels from Enterprise Wheel and Car Corporation, Bristol, Virginia, to Banner Fuel Corporation, Cranes Nest, Virginia. This shipment moved from Bristol to Bluefield, West Virginia, thence back to Cranes Nest, when the usual or normal route would have been from Bristol to Cranes Nest, wholly within the State.

An examination of the maps of the State of Virginia, introduced as exhibits, showing the network of improved roads between the points here involved, conclusively shows that the routes used by Service in moving the various shipments were not the usual or normal routes. The commission was justified in finding, on this uncontradicted evidence, that Service had used these circuitous routes in an effort to bring the shipments within the purview of the [fol. 96] authority granted under its certificate from the Interstate Commerce Commission.

Service assigns six errors, the first four of which can be embodied in the question: Is the State Corporation Commission vested with the authority to regulate intrastate commerce in these instances and, if so, did it act within the grant of that authority in assessing the fines upon Service? Service thus contends that the action of the State Corporation Commission is beyond its jurisdiction. Section 56-278, Code of Virginia, 1950, reads:

"§ 56-278. Required Certificates of Public Convenience and Necessity.—No common carrier by motor vehicle or restricted common carrier by motor vehicle not herein exempted shall engage in intrastate operation on any highway within the State without first having obtained from the Commission a certificate of public convenience and necessity authorizing such operation, and a statement of the State Highway Commission that the law applicable to the proposed route or routes has been complied with as to size, weight, and type of vehicles to be used, and a like statement as to any increase in size, weight, and type of vehicles proposed to be operated by the applicant after such application is granted."

It is clear from the above section that the State Corporation Commission is vested with authority to issue certificates of public convenience and necessity in proper [fol. 97] instances where a common carrier by motor vehicle applies for same. The obvious purpose of the section is to give the Commission control over intrastate traffic on the highways of the Commonwealth. It is conceded that Service did not hold such a certificate.

The governmental regulation and supervision by a State of its internal commerce may lawfully be exerted through validly constituted administrative commissions or boards. *Pa. R.R. Co.* v. *Towers,* 245 U. S. 6, 62 L. ed. 117, 38 S. Ct. 2, L.R.A. 1918C 475.

A commission, if authorized by the law of the State, may make orders and regulations concerning intrastate commerce which do not conflict with the enactments of Congress, and its discretion in this respect may be exercised upon a view of all existing relevant facts and circumstances. *Ill. C.R.R. Co.* v. *De Fuentes,* 236 U. S. 157, 59 L. ed. 517, 35 S. Ct. 275.

It will be observed that the commerce here involved moved from points in Virginia through Bluefield, West Virginia, and then back to points in Virginia. Service argues in its brief that such movements constitute interstate commerce as defined by its ICC certificate. It says:

"The carrier (Service) also accepts for transportation shipments moving from one Virginia point within the [fol. 98] described territory to a second Virginia point within the described territory. This is done by using the two separate grants set forth above in combination (meaning paragraphs 1 and 2 in its ICC certificate heretofore quoted). It is as though two independent carriers were interchanging freight, one with the other, at Bluefield, West Virginia. To exemplify, upon receiving a request to transport a shipment from Lynchburg, Virginia, to Draper, Virginia, the carrier would pick up the shipment at Lynchburg under the authority contained in the first paragraph set forth above, and transport it to its terminal at Bluefield, West Virginia. Upon arrival at that point, the shipment would be transported to the Virginia destination

under the authority contained in the second paragraph set forth above."

Such a movement as suggested would be a mere subterfuge, and an attempt to divest the State Corporation Commission of its jurisdiction over intrastate commerce. 15 C.J.S., Commerce, § 24, pp. 289, 290, Footnote 18. Why ship goods from Lynchburg, Virginia, to Draper, Virginia, through Bluefield, West Virginia, when the obvious usual or normal route would be direct from Lynchburg to Draper, wholly within the State?

"Whether any transaction constitutes interstate or intrastate commerce depends on the essential character of what is done and the substantial surrounding circumstances." 15 C.J.S., Commerce, § 18, p. 278.

Of course, there are many instances in which shipments between points in the same State can properly be identified as interstate commerce, where the shipments follow the usual or normal routes between the points involved. That is not the case here. An examination of the evidence which includes the map exhibits of Virginia and West [fol. 99] Virginia clearly shows that the "normal or usual" routes were not followed between the Virginia points involved. On the contrary, the shipments were hauled miles out of the way, over circuitous routes, in order to accomplish the purpose sought.

The reasoning employed in *Eichholz* v. *Public Service Commission*, 306 U. S. 268, 83 L. ed. 641, 646, 59 S. Ct. 532, is applicable here. There it is said:

"Appellant insists that the hauling from St. Louis over the state line to Kansas City, Kansas, of merchandise consigned to persons in Kansas City, Missouri, and hauling it back again to its intended destination in Kansas City, Missouri, was actually interstate transportation. * * * That fact, however, does not require the conclusion that the State's action for the protection of its intrastate commerce was invalid. See Lone Star Gas Co. v. Texas, 304 U. S. 224, 238, 82 L. ed. 1304, 1314, 58 S. Ct. 883. We may assume that Congress could regulate interstate transportation of the sort here in question, whatever the motive of those engaging in it. But in the absence of the exercise of

federal authority, and in the light of local exigencies, the State is free to act in order to protect its legitimate interests even though interstate commerce is directly affected. * * * If appellant's hauling of the merchandise in question across the State line was not in good faith but was a mere subterfuge to evade the State's requirement as to intrastate commerce, there is no ground for saying that the prohibition of the use of the interstate permit to cover such transactions, and the application of the Commission's rule prohibiting them in the absence of an intra- [fol. 100] state certificate, was an unwarrantable intrusion into the federal field or the subjection of interstate commerce to any unlawful restraint. * * *'"

The reasoning employed in *Eastern Carrier Corp.* v. *U. S.*, 31 F. Supp. 232, 236, is also applicable:

"* * * Thus it may not be concluded that because a carrier transports merchandise across a state line in order to evade the orders of a state public service commission, it has thereby engaged in bona fide interstate commerce serving public convenience and necessity. Upon the contrary, the purpose which the carrier has served by such operation is a purely private purpose, the evasion of the laws of a state.

"The definition sought to be applied by the plaintiff for the phrase 'bona fide operation' is one which cannot be supported with any show of reason. This clearly appears from the authority which the plaintiff itself cites in Slagle Contract Carrier Application, 2 M.C.C. 127, 141, wherein the Commission said: '* * * The Latin words "bona fide" mean "in good faith." Webster's New International Dictionary defines "bona fide" as "in or with good faith; without fraud or deceit; real or really; actual or actually; genuine or genuinely." As defined in Black's Law Dictionary, the words mean "in or with good faith; honestly, openly, and sincerely; without deceit or fraud". '"

Under our dual system of government, the inherent sovereign power to regulate intrastate transportation by common carriers is reserved to the State, and within the [fol. 101] limitation of the State Constitution the authority

of the legislature is supreme in the regulation of intrastate transportation by common carriers unless such regulation in effect deprives a person of property without due process of law or materially burdens interstate commerce in violation of the Constitution of the United States. On the other hand, the power to regulate interstate and foreign commerce is, by provisions of the Federal Constitution, vested in Congress, and has been exercised by the enactment of the Interstate Commerce Act. 9 Am. Jur., Carriers, § 44, p. 453, and cases cited under Footnote 17.

The question for decision is whether the instant shipments involved intrastate or interstate commerce. Our conclusion is that under the facts and circumstances established they involve intrastate commerce and are thus amenable to the jurisdiction of State authority.

Service's next assignment of error challenges the right of the State Corporation Commission to assess fines against it in the absence of a rule to show cause alleging specific violations. This assignment is directed to three alleged shipments, originating at Roanoke, Lynchburg and Roanoke, Virginia; their respective destinations being Kimballton, Marion, and Abingdon, Virginia.

[fol. 102] The Attorney General concedes the lack of proper allegations and proof to justify the fines imposed in these three instances. This will require an amendment to the Commission's order, resulting in a reduction in the combined fines against Service from $5,000 to $3,500.

The final assignment of error reads: "The Commission erred in holding that its decision in a prior case is res adjudicata as to the issues involved in this proceeding."

In view of our disposition of the case on its merits it is not necessary to consider this assignment.

For the reasons stated the order of the State Corporation Commission is affirmed in part, reversed in part and remanded, with directions that the order be amended in accordance with the views here expressed.

Affirmed in part; reversed in part, and remanded.

[fol. 103] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 104]

SUPREME COURT OF THE UNITED STATES

No. 92, October Term, 1958

[Title omitted]

ORDER ALLOWING CERTIORARI—October 13, 1958

The petition herein for a writ of certiorari to the Supreme Court of Appeals of the Commonwealth of Virginia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Note

Page 99 is Exhibit 1,
a road map of Virginia.
It is not fully reproducible, and is being omitted
altogether in this set.

[fol. 106]

EXHIBIT 2

C-5.1*

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

NO. MC 30471*

SERVICE STORAGE & TRANSFER CO., INC., BLUEFIELD, WEST VIRGINIA

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D.C., on the 27th day of July, A.D., 1943.

AFTER DUE INVESTIGATION, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

IT IS ORDERED, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such iterms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

General commodities, except those of unusual value, and except dangerous explosives, household goods as

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* This certificate also embraces the operating rights purchased by the above-named carrier from Arthur Goforth (H. T. Goforth, Administrator), doing business as Goforth Freight Lines, Docket No. MC 15815, pursuant to MC-F 1881, approved April 20, 1943.

defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, over irregular routes,

Between Bluefield, Va., Bluefield, W. Va., and points and places within five miles of Bluefield, W. Va.

Between Bluefield, Va., and points and places within five miles of Bluefield, Va., and those within five miles of Bluefield, W. Va., respectively, on the one hand, and, on the other, points and places in that part of Virginia and West Virginia within 75 miles of that territory. Between Bluefield, W. Va., on the one hand, and, on the other, points and places in West Virginia, that part of Virginia west of U.S. Highway 29 and south of U.S. Highway 60 including points and places on the indicated portions of the highways specified, and that part of Virginia north of U.S. Highway 60 which is within 80 miles of Bluefield, W. Va.

IT IS FURTHER ORDERED, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

AND IT IS FURTHER ORDERED, That this certificate shall supersede the certificate issued to the above-named carrier in this proceeding on January 9, 1941, and that issued to the predecessor in interest under Docket No. MC 15815 on May 3, 1941, which are hereby canceled; the latter certificate having been duly transferred to the above-named carrier, as set forth in the footnote appended hereto.

By the Commission, division 5.

/s/ W. P. BARTEL

W. P. BARTEL,
Secretary

(Seal.)

[fol. 107]

C-15.1-R

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

NO. MC 30471 SUB 1*

SERVICE STORAGE & TRANSFER COMPANY, INC., BLUEFIELD, WEST VIRGINIA

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D.C., on the 6th day of July, A.D., 1950

AFTER DUE INVESTIGATION, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

IT IS ORDERED, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

General commodities, except those of unusual value, and except dangerous explosives, household goods as defined in *Practices of Motor Common Carriers of*

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* This certificate embraces the remaining portion of the operating rights granted the above-named carrier in Certificate No. MC 30471 Sub 1, a portion thereof having been transferred pursuant to MC-FC 26729 (assigned No. MC 109329).

Household Goods, 17 M.C.C. 467, commodities in bulk, and those requiring special equipment, over irregular routes,

Between Bluefield, Va., and points and places in Virginia within five miles of Bluefield, and Bluefield, W. Va., and points and places in West Virginia within five miles of Bluefield, on the one hand, and, on the other, points and places in Pike, Letcher, and Harlan Counties, Ky.

AND IT IS FURTHER ORDERED, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revoation of this certificate.

By the Commission, division 5.

W. P. BARTEL,
Secretary.

(Seal)

[fol. 108]

EXHIBIT 4

SERVICE STORAGE AND TRANSFER COMPANY, INC.

OPERATION

November 28, 1956

Number of Employees—100

Equipment owned:

1 Company Sedan
1 Pickup Truck-Service Truck
20 Straight Trucks (2 open tops and 18 vans)
26 Tractors
52 Trailers (8 open tops, 44 vans)

100 Total

BREAKDOWN

Employees: Bluefield 82, Bristol 8, Roanoke 10.

Equipment: *Bluefield*

1 Company Sedan
1 Pickup Truck
2 Open top straight trucks
11 Van straight trucks
22 Tractors
8 Open top trailers
29 Van trailers

74 Total

Beckley

1 Open top straight truck
1 Van trailer

2 Total

Bristol

3 Van straight trucks
2 Tractors
4 Van trailers

9 Total

Charleston

4 Van trailers

4 Total

Roanoke

3 Van straight trucks
2 Tractors
6 Van trailers

11 Total

Total mileage for first ten months of 1956—1,349,280 Miles

[fol. 109] EXHIBIT 5

SERVICE STORAGE & TRANSFER CO., INC., BLUEFIELD, WEST VIRGINIA

MILEAGE BETWEEN POINTS IN VIRGINIA AND POINTS IN WEST VIRGINIA

		Miles Direct	Miles thru Bluefield, W. Va.
COVINGTON	—Beckley	98	156
LYNCHBURG	—LEWISBURG	119	243
ROANOKE	—WHITE SULPHUR SPRINGS	70	199
ROANOKE	—PRINCETON	98	122
LYNCHBURG	—WHITE SULPHUR SPRINGS	109	253
BRISTOL	—BERWIND	99	143
BRISTOL	—WELCH	116	135
BRISTOL	—LOGAN	169	198
MARION	—WELCH	71	109
COVINGTON	—HINTON	73	136

[fol. 110] EXHIBIT 6

SERVICE STORAGE & TRANSFER CO., INC., BLUEFIELD, WEST VIRGINIA

MILEAGE BETWEEN TWO POINTS IN VIRGINIA

		Miles Direct	Miles thru Bluefield, W. Va.
ROANOKE	—TAZEWELL	131	131
ROANOKE	—NARROWS	80	141
ROANOKE	—WYTHEVILLE	84	156
ROANOKE	—SALTVILLE	136	171
ROANOKE	—RICHLANDS	153	153
ROANOKE	—APPALACHIA	218	270
ROANOKE	—BRISTOL	154	206
ROANOKE	—COVINGTON	46	207
BRISTOL	—NORTON	70	262
BRISTOL	—RADFORD	120	142
BRISTOL	—WISE	75	267
BRISTOL	—COVINGTON	200	193
LYNCHBURG	—WYTHEVILLE	138	210

[fol. 111] EXHIBIT 7

SERVICE STORAGE & TRANSFER CO., INC., BLUEFIELD, WEST VIRGINIA

SHOWS TOTAL REVENUE, TONNAGE, AND NUMBER OF SHIPMENTS HANDLED BETWEEN TWO POINTS IN VIRGINIA IN COMPARISON TO TOTALS FROM ALL SHIPMENTS, DURING A ONE WEEK PERIOD BEGINNING JUNE 18, 1956 AND ENDING JUNE 23, 1956.

FROM ALL SHIPMENTS:

TOTAL REVENUE	$14,161.37
TOTAL TONNAGE	1,913,027 pounds
TOTAL NO. SHIPMENTS	2,605

FROM SHIPMENTS HANDLED BETWEEN TWO POINTS IN VIRGINIA:

TOTAL REVENUE	$500.95	3.5% OF ALL SHIPMENTS
TOTAL TONNAGE	36,213 pounds	1.9% OF ALL SHIPMENTS
TOTAL NO. SHIPMENTS	81	3.1% OF ALL SHIPMENTS

[fol. 112]

EXHIBIT 8

SERVICE STORAGE & TRANSFER CO., INC., BLUEFIELD, WEST VIRGINIA

SHOWS TOTAL REVENUE, TONNAGE, AND NUMBER OF SHIPMENTS HANDLED BETWEEN TWO POINTS IN VIRGINIA IN COMPARISON TO TOTALS FROM ALL SHIPMENTS DURING A ONE WEEK PERIOD BEGINNING AUGUST 13, 1956 AND ENDING AUGUST 18, 1956.

FROM ALL SHIPMENTS:

TOTAL REVENUE	$16,998.60
TOTAL TONNAGE	2,199,956 pounds
TOTAL SHIPMENTS	2,768

FROM SHIPMENTS HANDLED BETWEEN TWO POINTS IN VIRGINIA:

TOTAL REVENUE	$412.18	2.4% OF ALL SHIPMENTS
TOTAL TONNAGE	26,941	1.2% OF ALL SHIPMENTS
TOTAL NO. SHIPMENTS	67	2.4% OF ALL SHIPMENTS

[fol. 113] Clerk's certificate to foregoing exhibits (omitted in printing).